

# TABLE OF CHAPTERS

## REISSUE REVISED STATUTES

Chapter Number	No. of Articles	Chapter Number	No. of Articles
1. Accountants .....	1	45. Interest, Loans, and Debt .....	12
2. Agriculture .....	57	46. Irrigation and Regulation of Water .....	16
3. Aeronautics .....	8	47. Jails and Correctional Facilities .....	9
4. Aliens .....	1	48. Labor .....	35
5. Apportionment .....	Transferred or Repealed	49. Law .....	18
6. Assignment for Creditors .....	Repealed	50. Legislature .....	14
7. Attorneys at Law .....	2	51. Libraries and Museums .....	8
8. Banks and Banking .....	28	52. Liens .....	22
9. Bingo and Other Gambling .....	10	53. Liquors .....	5
10. Bonds .....	12	54. Livestock .....	28
11. Bonds and Oaths, Official .....	2	55. Militia .....	6
12. Cemeteries .....	14	56. Milldams .....	Repealed
13. Cities, Counties, and Other Political Subdivisions .....	32	57. Minerals, Oil, and Gas .....	15
14. Cities of the Metropolitan Class .....	21	58. Money and Financing .....	8
15. Cities of the Primary Class .....	13	59. Monopolies and Unlawful Combinations .....	18
16. Cities of the First Class .....	11	60. Motor Vehicles .....	31
17. Cities of the Second Class and Villages .....	10	61. Natural Resources .....	2
18. Cities and Villages; Laws Applicable to All .....	33	62. Negotiable Instruments .....	3
19. Cities and Villages; Particular Classes .....	53	63. Newspapers and Periodicals .....	1
20. Civil Rights .....	5	64. Notaries Public .....	3
21. Corporations and Other Companies .....	29	65. Oaths and Affirmations .....	Transferred
22. Counties .....	4	66. Oils, Fuels, and Energy .....	21
23. County Government and Officers .....	39	67. Partnerships .....	4
24. Courts .....	13	68. Public Assistance .....	20
25. Courts; Civil Procedure .....	34	69. Personal Property .....	27
26. Courts, Municipal; Civil Procedure .....	Transferred or Repealed	70. Power Districts and Corporations .....	21
27. Courts; Rules of Evidence .....	13	71. Public Health and Welfare .....	95
28. Crimes and Punishments .....	16	72. Public Lands, Buildings, and Funds .....	25
29. Criminal Procedure .....	46	73. Public Lettings and Contracts .....	6
30. Decedents' Estates; Protection of Persons and Property .....	42	74. Railroads .....	16
31. Drainage .....	10	75. Public Service Commission .....	10
32. Elections .....	17	76. Real Property .....	35
33. Fees and Salaries .....	1	77. Revenue and Taxation .....	63
34. Fences, Boundaries, and Landmarks .....	3	78. Salvages .....	Repealed
35. Fire Companies and Firefighters .....	14	79. Schools .....	25
36. Fraud .....	7	80. Servicemembers and Veterans .....	9
37. Game and Parks .....	16	81. State Administrative Departments .....	37
38. Health Occupations and Professions .....	37	82. State Culture and History .....	6
39. Highways and Bridges .....	28	83. State Institutions .....	12
40. Homesteads .....	1	84. State Officers .....	16
41. Hotels and Inns .....	2	85. State University, State Colleges, and Postsecondary Education .....	26
42. Households and Families .....	13	86. Telecommunications and Technology .....	10
43. Infants and Juveniles .....	47	87. Trade Practices .....	8
44. Insurance .....	91	88. Warehouses .....	6
		89. Weights and Measures .....	2
		90. Special Acts .....	5
		91. Uniform Commercial Code .....	12

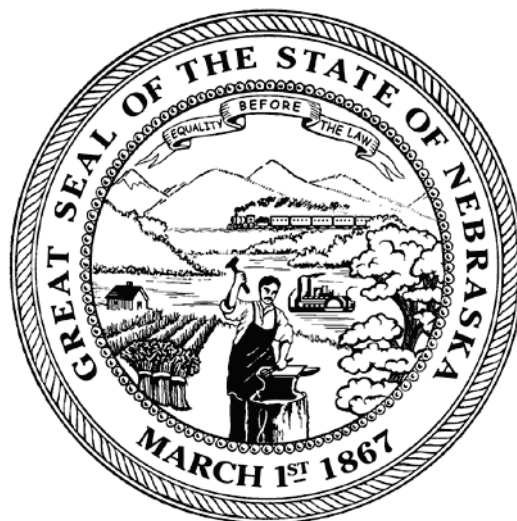


# REVISED STATUTES OF NEBRASKA

## 2017 SUPPLEMENT

EDITED, ANNOTATED, AND PUBLISHED  
BY THE  
REVISOR OF STATUTES

VOLUME 1  
CHAPTERS 1 TO 41, INCLUSIVE



CITE AS FOLLOWS

R.S.SUPP.,2017

COPYRIGHT, 2017

by

Joanne M. Pepperl  
Revisor of Statutes

For the benefit of the  
State of Nebraska

**Errata:**

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

**Reissue of Volumes 1 to 6**

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

Volumes 1, 1A, and 1B .....	2012
Volumes 2 and 2A.....	2016
Volume 3 .....	2016
Volumes 3A and 3B .....	2010
Volumes 4 and 4A.....	2009
Volumes 5 and 5A.....	2014
Volume 6.....	2001
Cross Reference Tables.....	2000

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

## **CERTIFICATE OF AUTHENTICATION**

I, Joanne M. Pepperl, Revisor of Statutes, do hereby certify that the laws included in the 2017 Supplement to the Revised Statutes of Nebraska are true and correct copies of the original acts enacted by the One Hundred Fifth Legislature, First Session, 2017, 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, 2017

### EDITORIAL STAFF

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





ANNOTATIONS

ANNOTATIONS

CONSTITUTION OF THE STATE OF NEBRASKA

**Article I, sec. 3.**

Limitations on ex post facto judicial decisionmaking are inherent in the notion of due process, and retroactive judicial decisionmaking may be analyzed in accordance with the more basic and general principle of fair warning under the Due Process Clause; the question is whether the judicial decision being applied retroactively is both unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue. *Caton v. State*, 291 Neb. 939, 869 N.W.2d 911 (2015).

**Article I, sec. 7.**

A seizure subject to constitutional protections did not occur where a police officer activated the patrol unit's overhead lights and merely questioned the defendant in a public place; there was no evidence that the officer displayed his weapon, used a forceful tone of voice, touched the defendant, or otherwise told the defendant that he was not free to leave. *State v. Gilliam*, 292 Neb. 770, 874 N.W.2d 48 (2016).

Provision in a warrant authorizing the police to search for "[a]ny and all firearms" was sufficiently particular. *State v. Tyler*, 291 Neb. 920, 870 N.W.2d 119 (2015).

The consent to search a cell phone was given voluntarily where the defendant had been released from the squad car and handcuffs and had participated in the search by helping the officers unlock the cell phone's lock code. *State v. Tyler*, 291 Neb. 920, 870 N.W.2d 119 (2015).

**Article I, sec. 16.**

The Ex Post Facto Clauses are a limitation upon the powers of the Legislature and do not concern judicial decisions. *Caton v. State*, 291 Neb. 939, 869 N.W.2d 911 (2015).

**Article III, sec. 18.**

A zoning ordinance's exemption for property in a fixed geographic area was not special legislation, because it did not create a closed class nor did it create an arbitrary and unreasonable method of classification. *Dowd Grain Co. v. County of Sarpy*, 291 Neb. 620, 867 N.W.2d 599 (2015).

Generally, a class of property owners in a certain geographic area cannot form a closed class. *Dowd Grain Co. v. County of Sarpy*, 291 Neb. 620, 867 N.W.2d 599 (2015).

STATUTES OF THE STATE OF NEBRASKA

**7-101.**

A responsive letter filed by the registered agent on behalf of the defendant corporation was a nullity and did not constitute an answer, because the registered agent is not a party to the lawsuit and is not authorized to practice law. *Turbines Ltd. v. Transupport, Inc.*, 19 Neb. App. 485, 808 N.W.2d 643 (2012).

**8-1118.**

A buyer's sophistication is irrelevant to a claim under subsection (1) of this section. *DMK Biodiesel v. McCoy*, 290 Neb. 286, 859 N.W.2d 867 (2015).

Reliance is not an element of an investor's claim against the seller of a security under subsection (1) of this section. *DMK Biodiesel v. McCoy*, 290 Neb. 286, 859 N.W.2d 867 (2015).

## ANNOTATIONS

### 13-911.

The trial court's finding that prior to a collision, the police officers activated the cruiser's overhead lights and the cruiser was increasing its speed supported the court's conclusion that the officers were making an active attempt to apprehend. *Williams v. City of Omaha*, 291 Neb. 403, 865 N.W.2d 779 (2015).

### 23-114.04.

The purpose of a building permit is to ensure compliance with zoning regulations, which compliance should be obtained before construction of the building or structure. *Dowd Grain Co. v. County of Sarpy*, 19 Neb. App. 550, 810 N.W.2d 182 (2012).

### 23-1734.

An order by a sheriff's merit commission is not final until the order is written and delivered to the parties or counsel. *Schaffer v. Cass County*, 290 Neb. 892, 863 N.W.2d 143 (2015).

### 25-223.

Where there is no claim that a builder failed to make repairs when requested to do so pursuant to an express warranty and the claim is based on the defective construction itself, the express warranty does not extend the statute of limitations. *Adams v. Manchester Park*, 291 Neb. 978, 871 N.W.2d 215 (2015).

### 25-301.

Under this section, an amendment joining the real parties in interest relates back to the date of the original pleading. *Fisher v. Heirs & Devisees of T.D. Lovercheck*, 291 Neb. 9, 864 N.W.2d 212 (2015).

### 25-322.

Although an attorney of a deceased client may have a duty to protect the client's interests by alerting a legal representative of his or her pending claim, absent a contractual agreement to the contrary, an attorney's representation of a client generally ends upon the death of that client. A deceased party's representative or successor in interest must either seek a conditional order of revival under Chapter 25, article 14, of the Nebraska Revised Statutes or seek a court's substitution order under this section before an action or proceeding can continue. *In re Conservatorship of Franke*, 292 Neb. 912, 875 N.W.2d 408 (2016).

An attorney's unauthorized actions on the part of a deceased client are a nullity. So, unless a deceased client's legal representative or the client's contractual agreement authorizes the attorney to take or continue an action for the client, an attorney cannot take any further valid action in the matter. *In re Conservatorship of Franke*, 292 Neb. 912, 875 N.W.2d 408 (2016).

In this section, the Legislature anticipated that a substitution of a legal representative or successor in interest is required when a party dies before the action can continue. This substitution is required because a deceased person cannot maintain a right of action against another or defend a legal interest in an action or proceeding. *In re Conservatorship of Franke*, 292 Neb. 912, 875 N.W.2d 408 (2016).

### 25-328.

A parent in a juvenile action does not need to follow the intervention procedures set forth in this section and sections 25-329 and 25-330 in order to participate in juvenile proceedings involving the parent's child. *In re Interest of Sloane O.*, 291 Neb. 892, 870 N.W.2d 110 (2015).

### 25-329.

A parent in a juvenile action does not need to follow the intervention procedures set forth in this section and sections 25-328 and 25-330 in order to participate in juvenile proceedings involving the parent's child. *In re Interest of Sloane O.*, 291 Neb. 892, 870 N.W.2d 110 (2015).

## ANNOTATIONS

### **25-330.**

A parent in a juvenile action does not need to follow the intervention procedures set forth in this section and sections 25-328 and 25-329 in order to participate in juvenile proceedings involving the parent's child. In re Interest of Sloane O., 291 Neb. 892, 870 N.W.2d 110 (2015).

### **25-824.**

When a motion for attorney fees under this section is made prior to the judgment of the court in which the attorney's services were rendered, the judgment will not become final and appealable until the court has ruled upon that motion. Murray v. Stine, 291 Neb. 125, 864 N.W.2d 386 (2015).

### **25-1090.**

A summary judgment in a receiver's favor finding that he is not liable to an intervenor for a claim is a "direction" to a receiver from which an appeal is allowable; such summary judgment is "final" because it fully and completely determines the dispute between the intervenor and the receiver. Sutton v. Killham, 19 Neb. App. 842, 820 N.W.2d 292 (2012).

### **25-1144.01.**

The trial court's unsigned journal entry that was sent to both parties was the court's announcement of its decision, and thus, the defendant's motion for new trial, which was filed after the court sent the unsigned journal entry to the parties but before the court entered the marital dissolution decree, was effective under this section. Despain v. Despain, 290 Neb. 32, 858 N.W.2d 566 (2015).

### **25-1148.**

An application for continuance shall state the grounds upon which the application is made and be supported by affidavits of persons competent to testify as witnesses in proof of and setting forth the facts upon which such continuance is asked. State v. Vela-Montes, 19 Neb. App. 378, 807 N.W.2d 544 (2011).

Noncompliance with the clear mandates of this section is merely a factor to be considered in determining whether the trial court abused its discretion in ruling upon a motion for continuance. State v. Vela-Montes, 19 Neb. App. 378, 807 N.W.2d 544 (2011).

### **25-1301.**

A docket entry that is neither signed nor file stamped is not a final order. State v. Meints, 291 Neb. 869, 869 N.W.2d 343 (2015).

### **25-1315.**

Without an express determination that there is no reason for delay and an express direction for the entry of final judgment from the trial court, an appellate court is without jurisdiction to hear an appeal from an order that does not dispose of all of the claims against all of the parties. Abante, LLC v. Premier Fighter, 19 Neb. App. 730, 814 N.W.2d 109 (2012).

### **25-1332.**

Summary judgment is proper when the pleadings and the evidence admitted at the hearing disclose that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law. Stackhouse v. Gaver, 19 Neb. App. 117, 801 N.W.2d 260 (2011).

### **25-1334.**

The affidavit of a county's planning director, which attached the zoning regulations at issue, was material and relevant, even if the portion of the affidavit containing the affiant's interpretation of the regulation and its applicability was inadmissible. Dowd Grain Co. v. County of Sarpy, 19 Neb. App. 550, 810 N.W.2d 182 (2012).

## ANNOTATIONS

### 25-1635.

Absent a reasonable ground for investigating jury misconduct or corruption, a party cannot use posttrial interviews with jurors as a "fishing expedition" to find some reason to attack a verdict. *Golnick v. Callender*, 290 Neb. 395, 860 N.W.2d 180 (2015).

Because there is no constitutional right to obtain information about a jury's deliberations, a court's discretion under this section to disclose juror information for good cause shown after a verdict should be tempered by the restrictions imposed under section 27-606(2). *Golnick v. Callender*, 290 Neb. 395, 860 N.W.2d 180 (2015).

### 25-1708.

The scope of the exception to this section is limited to a plaintiff's waiver or release of costs in writing. *Credit Mgmt. Servs. v. Jefferson*, 290 Neb. 664, 861 N.W.2d 432 (2015).

This section does not provide for an exception where the defendant voluntarily paid the plaintiff's claim after the action was filed but before a judgment was entered. *Credit Mgmt. Servs. v. Jefferson*, 290 Neb. 664, 861 N.W.2d 432 (2015).

### 25-1901.

Sheriffs' merit commissions are considered "tribunals" under this section. *Schaffer v. Cass County*, 290 Neb. 892, 863 N.W.2d 143 (2015).

An action brought by a county employee alleging that administrative discipline imposed upon him by his employer was a breach of contract was, at its core, an appeal of the decision of an administrative body denying a grievance and must comply with the petition in error statutes. *Turnbull v. County of Pawnee*, 19 Neb. App. 43, 810 N.W.2d 172 (2011).

### 25-1902.

An order of the trial court issuing a warrant for a defendant's arrest and commitment upon finding that the Department of Correctional Services had erroneously released the defendant before his mandatory discharge date was an order on summary application relating to a final judgment (the defendant's sentence). But the order did not affect a substantial right necessary to qualify for immediate appeal. The trial court was not deciding any important right or issue affecting the subject matter of the underlying criminal action or of any rights allegedly derived from the mistaken release, and the trial court did not diminish any claim or defense that was available to the defendant prior to the order for an arrest and commitment warrant. *State v. Jackson*, 291 Neb. 908, 870 N.W.2d 133 (2015).

An order dismissing a case "subject to being reinstated" upon the filing of a motion for reinstatement within 14 days is conditional and, thus, not a final order. *State v. Meints*, 291 Neb. 869, 869 N.W.2d 343 (2015).

An order in a juvenile proceeding merely finding the federal Indian Child Welfare Act of 1978 and the Nebraska Indian Child Welfare Act applicable, without further adjudicative or dispositive action, is not a final order within the meaning of this section. *In re Interest of Jassenia H.*, 291 Neb. 107, 864 N.W.2d 242 (2015).

A court's temporary injunction or stay that merely preserves the status quo pending a further order is not an order that amounts to a dismissal of the action or that permanently denies relief to a party. So it is not a final, appealable order. *Shasta Linen Supply v. Applied Underwriters*, 290 Neb. 640, 861 N.W.2d 425 (2015).

A motion to compel arbitration invokes a special proceeding. An order that compels arbitration or stays court proceedings pending arbitration divests the court of jurisdiction to hear the parties' dispute and determines arbitrability. Accordingly, it is a final, appealable order. *Shasta Linen Supply v. Applied Underwriters*, 290 Neb. 640, 861 N.W.2d 425 (2015).

When an appeal presents two jurisdictional issues—whether a party has appealed from a final order or judgment and whether the lower court had jurisdiction over the parties' dispute—the first step in determining appellate jurisdiction is to determine whether the lower court's order was final and appealable. *Shasta Linen Supply v. Applied Underwriters*, 290 Neb. 640, 861 N.W.2d 425 (2015); *Big John's Billiards v. State*, 283 Neb. 496, 811 N.W.2d 205 (2012).

Juvenile court orders which changed the permanency objective from reunification to adoption, with concurrent plans that did not include reunification with the mother, were appealable even though they contained many of the same goals and strategies as previous orders, because an oral statement by the juvenile court from the bench had

## ANNOTATIONS

the effect of ending any services aimed at reunification with the mother and, thus, affected the mother's substantial rights. *In re Interest of Octavio B. et al.*, 290 Neb. 589, 861 N.W.2d 415 (2015).

The three types of final orders which may be reviewed on appeal are (1) an order which affects a substantial right in an action and which in effect 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. *Kilgore v. Nebraska Dept. of Health & Human Servs.*, 277 Neb. 456, 763 N.W.2d 77 (2009); *State v. Bjorklund*, 258 Neb. 432, 604 N.W.2d 169 (2000); *State v. Silvers*, 255 Neb. 702, 587 N.W.2d 325 (1998); *In re Interest of Anthony G.*, 255 Neb. 442, 586 N.W.2d 427 (1998); *State v. Kula*, 254 Neb. 962, 579 N.W.2d 541 (1998); *Hull v. Aetna Ins. Co.*, 247 Neb. 713, 529 N.W.2d 783 (1995); *Rohde v. Farmers Alliance Mut. Ins. Co.*, 244 Neb. 863, 509 N.W.2d 618 (1994); *Jarrett v. Eichler*, 244 Neb. 310, 506 N.W.2d 682 (1993); *In re Interest of R.G.*, 238 Neb. 405, 470 N.W.2d 780 (1991); *Abante, LLC v. Premier Fighter*, 19 Neb. App. 730, 814 N.W.2d 109 (2012); *Michael B. v. Donna M.*, 11 Neb. App. 346, 652 N.W.2d 618 (2002); *Jacobson v. Jacobson*, 10 Neb. App. 622, 635 N.W.2d 272 (2001); *O'Connor v. Kaufman*, 6 Neb. App. 382, 574 N.W.2d 513 (1998).

The granting of a summary judgment is a final order where it concludes all issues between the two parties on either side of the motion. *Abante, LLC v. Premier Fighter*, 19 Neb. App. 730, 814 N.W.2d 109 (2012).

### **25-21,185.08.**

A request for inconvenience damages is subsumed within a plaintiff's request for mental pain and suffering damages, when the facts show that the plaintiff is actually seeking hedonic damages for the plaintiff's loss of enjoyment of life resulting from physical injuries. *Golnick v. Callender*, 290 Neb. 395, 860 N.W.2d 180 (2015).

Apart from an exception for anxiety damages associated with parasitic damages, a request for anxiety damages is usually subsumed with a plaintiff's request for mental pain and suffering damages. *Golnick v. Callender*, 290 Neb. 395, 860 N.W.2d 180 (2015).

### **25-2214.**

Although the appellate court's mandate did not state that buyout payments were to be made to the clerk of the district court, the district court had authority to make such an order, because the proper place to pay a judgment is the clerk of the court in which the judgment is obtained. *Robertson v. Jacobs Cattle Co.*, 292 Neb. 195, 874 N.W.2d 1 (2015).

### **25-2301.**

The "fees" specified in subsection (2) of this section do not include a party's attorney fees. *State v. Ortega*, 290 Neb. 172, 859 N.W.2d 305 (2015).

### **25-2301.01.**

By obtaining permission to proceed in forma pauperis, a party is not granted the payment of his or her attorney fees. *State v. Ortega*, 290 Neb. 172, 859 N.W.2d 305 (2015).

### **25-2301.02.**

Under subsection (1) of this section, a trial court cannot deny in forma pauperis status based on the frivolous or malicious nature of the appeal where a defendant has a constitutional right to appeal in a felony case, and a hearing is required on an objection to a party's application for in forma pauperis status, whether the objection is based on the applicant's ability to pay or the applicant is asserting a frivolous position, except where the objection is made on the court's own motion on the grounds that the legal positions asserted by the applicant are frivolous or malicious. *State on behalf of Jakai C. v. Tiffany M.*, 292 Neb. 68, 871 N.W.2d 230 (2015).

An appellate court obtains jurisdiction over an appeal challenging the denial of an application to proceed in forma pauperis upon the filing of a proper application to proceed in forma pauperis and a poverty affidavit with the party's timely notice of appeal. *State v. Carter*, 292 Neb. 16, 870 N.W.2d 641 (2015).

The trial court properly denied leave to proceed in forma pauperis on the basis that the party asserted only frivolous legal positions in the party's underlying motion for postconviction relief. *State v. Carter*, 292 Neb. 16, 870 N.W.2d 641 (2015).

## ANNOTATIONS

The filing of an action in an improper venue does not make the legal position asserted by a plaintiff "frivolous or malicious" for purposes of in forma pauperis status. *Castonguay v. Retelsdorf*, 291 Neb. 220, 865 N.W.2d 91 (2015).

### 27-301.

The concept referred to as a "presumption of undue influence" in will contests is not a true presumption. In re Estate of Clinger, 292 Neb. 237, 872 N.W.2d 37 (2015).

The trial court did not err in refusing a proposed instruction on a presumption of undue influence where both the contestant and the proponent had met their respective burdens of production of evidence. In re Estate of Clinger, 292 Neb. 237, 872 N.W.2d 37 (2015).

### 27-401.

The relevance of DNA evidence depends on whether it tends to include or exclude an individual as the source of a biological sample. Nebraska case law generally requires that DNA testing results be accompanied by statistical evidence or a probability assessment that explains whether the results tend to include or exclude the individual as a potential source. *State v. Johnson*, 290 Neb. 862, 862 N.W.2d 757 (2015).

Unless the State presents the statistical significance of DNA testing results that shows a defendant cannot be excluded as a potential source in a biological sample, the results are irrelevant. They are irrelevant because they do not help the fact finder assess whether the defendant is or is not the source of the sample. And because of the significance that jurors will likely attach to DNA evidence, the value of inconclusive testing results is substantially outweighed by the danger that the evidence will mislead the jurors. *State v. Johnson*, 290 Neb. 862, 862 N.W.2d 757 (2015).

### 27-402.

The relevance of DNA evidence depends on whether it tends to include or exclude an individual as the source of a biological sample. Nebraska case law generally requires that DNA testing results be accompanied by statistical evidence or a probability assessment that explains whether the results tend to include or exclude the individual as a potential source. *State v. Johnson*, 290 Neb. 862, 862 N.W.2d 757 (2015).

Unless the State presents the statistical significance of DNA testing results that shows a defendant cannot be excluded as a potential source in a biological sample, the results are irrelevant. They are irrelevant because they do not help the fact finder assess whether the defendant is or is not the source of the sample. And because of the significance that jurors will likely attach to DNA evidence, the value of inconclusive testing results is substantially outweighed by the danger that the evidence will mislead the jurors. *State v. Johnson*, 290 Neb. 862, 862 N.W.2d 757 (2015).

### 27-403.

In a will contest, the trial court did not abuse its discretion in receiving into evidence a video showing the execution of an earlier will; the video was neither unfairly prejudicial nor cumulative. In re Estate of Clinger, 292 Neb. 237, 872 N.W.2d 37 (2015).

A court should exclude an expert's opinion when it gives rise to conflicting inferences of equal probability, so the choice between them is a matter of conjecture. An expert opinion which is equivocal and is based upon such words as "could," "may," or "possibly" lacks the certainty required to sustain the burden of proof of causation for which the opinion has been offered. *State v. Johnson*, 290 Neb. 862, 862 N.W.2d 757 (2015).

An expert does not have to couch his or her opinion in the magic words of "reasonable certainty," but it must be sufficiently definite and relevant to provide a basis for the fact finder's determination of a material fact. *State v. Johnson*, 290 Neb. 862, 862 N.W.2d 757 (2015).

The relevance of DNA evidence depends on whether it tends to include or exclude an individual as the source of a biological sample. Nebraska case law generally requires that DNA testing results be accompanied by statistical evidence or a probability assessment that explains whether the results tend to include or exclude the individual as a potential source. *State v. Johnson*, 290 Neb. 862, 862 N.W.2d 757 (2015).

Unless the State presents the statistical significance of DNA testing results that shows a defendant cannot be excluded as a potential source in a biological sample, the results are irrelevant. They are irrelevant because they do not help the fact finder assess whether the defendant is or is not the source of the sample. And because of the

## ANNOTATIONS

significance that jurors will likely attach to DNA evidence, the value of inconclusive testing results is substantially outweighed by the danger that the evidence will mislead the jurors. *State v. Johnson*, 290 Neb. 862, 862 N.W.2d 757 (2015).

### **27-404.**

In prosecution for intentional child abuse resulting in death, evidence of the child's prior injuries while in the defendant's care was admissible, because those injuries were inextricably intertwined with the fatal injuries. *State v. Cullen*, 292 Neb. 30, 870 N.W.2d 784 (2015).

Although it is proper to admit evidence of other wrongs which constitutes intrinsic evidence intertwined with the charged offense, where the challenged evidence does not include any showing linking the defendant to the other wrongs evidence, it is not intrinsic evidence intertwined with the charged offense. *State v. Thomas*, 19 Neb. App. 36, 798 N.W.2d 620 (2011).

### **27-414.**

Trial court did not abuse its discretion in admitting evidence of a prior sexual assault where the defendant admitted to committing the earlier offense, both offenses involved young boys, and both occurred at a time when the defendant was acting as a babysitter for the boys. *State v. Craigie*, 19 Neb. App. 790, 813 N.W.2d 521 (2012).

### **27-606.**

A trial court's duty to hold an evidentiary hearing on a substantiated allegation of jury misconduct does not extend into matters which are barred from inquiry under subsection (2) of this section. *State v. Stricklin*, 290 Neb. 542, 861 N.W.2d 367 (2015).

The jury's consideration of a defendant's failure to testify is barred from inquiry under subsection (2) of this section. *State v. Stricklin*, 290 Neb. 542, 861 N.W.2d 367 (2015).

Because there is no constitutional right to obtain information about a jury's deliberations, a court's discretion under section 25-1635 to disclose juror information for good cause shown after a verdict should be tempered by the restrictions imposed under subsection (2) of this section. *Golnick v. Callender*, 290 Neb. 395, 860 N.W.2d 180 (2015).

### **27-608.**

Subsection (2) of this section permits questioning during cross-examination only on specific instances of conduct not resulting in a criminal conviction. *State v. Stricklin*, 290 Neb. 542, 861 N.W.2d 367 (2015).

### **27-701.**

A police officer's testimony regarding the meanings of drug-related code words and jargon used by people involved in the distribution of crack cocaine could not be excluded in a prosecution for drug conspiracy on the basis it invaded the province of the jury. The officer's testimony was helpful, because the meanings of narcotics code words and phrases were not within the common understanding of most jurors, cyphering of the meaning and intent of cell phone calls involving the defendant was something the jury could not do without the interpretation of slang or code words used during the wiretapped calls, and there was proper foundation for the officer's testimony. *State v. Russell*, 292 Neb. 501, 874 N.W.2d 9 (2016).

### **27-702.**

A trial court can consider several nonexclusive factors in determining the reliability of an expert's opinion: (1) whether a theory or technique can be (and has been) tested; (2) whether it has been subjected to peer review and publication; (3) whether, in respect to a particular technique, there is a high known or potential rate of error; (4) whether there are standards controlling the technique's operation; and (5) whether the theory or technique enjoys general acceptance within a relevant scientific community. *State v. Braesch*, 292 Neb. 930, 874 N.W.2d 874 (2016).

Absent evidence that an expert's testimony grows out of the expert's own prelitigation research or that an expert's research has been subjected to peer review, experts must show that they reached their opinions by following an accepted method or procedure as it is practiced by others in their field. *State v. Braesch*, 292 Neb. 930, 874 N.W.2d 874 (2016).

## ANNOTATIONS

Before admitting expert opinion testimony under this section, a trial court must determine whether the expert's knowledge, skill, experience, training, and education qualify the witness as an expert. If an expert's opinion involves scientific or specialized knowledge, a trial court must determine whether the reasoning or methodology underlying the testimony is valid (reliable). It must also determine whether that reasoning or methodology can be properly applied to the facts in issue. *State v. Braesch*, 292 Neb. 930, 874 N.W.2d 874 (2016).

In a bench trial, a trial court is not required to conclusively determine whether an expert's opinion is reliable before admitting the expert's testimony, because the court is not shielding the jury from unreliable evidence. The court has discretion to admit a qualified expert's opinion subject to its later determination after hearing further evidence that the opinion is unreliable and should not be credited. *State v. Braesch*, 292 Neb. 930, 874 N.W.2d 874 (2016).

To be admissible, an expert's opinion must be based on good grounds, not mere subjective belief or unsupported speculation. A trial court should not require absolute certainty in an expert's opinion, but it has discretion to exclude expert testimony if an analytical gap between the data and the proffered opinion is too great. *State v. Braesch*, 292 Neb. 930, 874 N.W.2d 874 (2016).

### **27-801.**

Pursuant to subsection (4) of this section, the definitional exclusion to the hearsay rule applies to the coverup or concealment of the conspiracy that occurs while the conspiracy is ongoing, just as it would to any other part of the conspiracy. *State v. Henry*, 292 Neb. 834, 875 N.W.2d 374 (2016).

Pursuant to subsection (4) of this section, to withdraw from a conspiracy such that statements of a coconspirator are inadmissible, the coconspirator must do more than ceasing, however definitively, to participate; rather, the coconspirator must make an affirmative action either by making a clean breast to the authorities or by communicating abandonment in a manner calculated to reach coconspirators, and must not resume participation in the conspiracy. *State v. Henry*, 292 Neb. 834, 875 N.W.2d 374 (2016).

The fact that witnesses' memories conflict as to when, where, or how out-of-court statements were made may be relevant to the credibility of the witnesses' testimony, but it is not relevant for purposes of analyzing whether an out-of-court statement is a prior consistent statement. *State v. Smith*, 292 Neb. 434, 873 N.W.2d 169 (2016).

### **27-803.**

Nebraska's business record exception to hearsay is not a carbon copy of its federal counterpart. Unlike Fed. R. Evid. 803(6), subsection (5) of this section excludes opinions and diagnoses from the business record exception. So, an expert's opinions and medical diagnoses, as distinguished from factual statements, in an employer's file for an employee were not admissible under Nebraska's business record exception. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

The business record exception to hearsay is not limited to records created by the holder of the records. It applies to a memorandum, report, record, or data compilation. The term "data compilation" is broad enough to include records furnished by third parties with knowledge of the relevant acts, events, or conditions if the third party has a duty to make the records and the holder of the record routinely compiles and keeps them. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

### **27-804.**

When considering whether a good faith effort to procure a witness has been made under subdivision (1)(e) of this section, the proper inquiry is whether the means utilized by the proponent prior to trial were reasonable, not whether other means remain available at the time of trial or whether additional steps might have been undertaken. *State v. Trice*, 292 Neb. 482, 874 N.W.2d 286 (2016).

### **27-901.**

The proponent of the text messages is not required to conclusively prove who authored the messages; the possibility of an alteration or misuse by another generally goes to weight, not admissibility. *State v. Henry*, 292 Neb. 834, 875 N.W.2d 374 (2016).



## ANNOTATIONS

### **28-105.**

A person convicted of a felony for which a mandatory minimum sentence is prescribed is not eligible for probation. *State v. Russell*, 291 Neb. 33, 863 N.W.2d 813 (2015).

For purposes of the authorized limits of an indeterminate sentence, both "mandatory minimum" as used in section 28-319.01(2) and "minimum" as used in this section in regard to a Class IB felony mean the lowest authorized minimum term of the indeterminate sentence. *State v. Russell*, 291 Neb. 33, 863 N.W.2d 813 (2015).

### **28-201.**

An intentional killing can be manslaughter, if it results from a sudden quarrel. Thus, attempted sudden quarrel manslaughter can be considered a crime. *State v. Smith*, 19 Neb. App. 708, 811 N.W.2d 720 (2012).

### **28-305.**

Because this section is a codification of the common-law crime of involuntary manslaughter, the State must show all elements of that common-law crime to convict under that section, unless the Legislature expressly dispensed with any such element. Because the Legislature did not specifically exclude mens rea from the language of the offense, the State must show mens rea to sustain a conviction. *State v. Carman*, 292 Neb. 207, 872 N.W.2d 559 (2015).

The State has prosecutorial discretion to charge a person for either manslaughter or motor vehicle homicide as the result of an unintentional death arising from an unlawful act during the operation of a motor vehicle where the defendant's conduct constitutes both offenses; but if the State chooses to pursue charges for manslaughter, it must show mens rea. *State v. Carman*, 292 Neb. 207, 872 N.W.2d 559 (2015).

To convict a defendant of "unlawful act" manslaughter or "involuntary" manslaughter, the State must show that the defendant acted with more than ordinary negligence in committing the predicate unlawful act. *State v. Carman*, 292 Neb. 207, 872 N.W.2d 559 (2015).

Traffic infractions are public welfare offenses which do not require a showing of mens rea and, therefore, are insufficient by themselves to support a conviction for "unlawful act" manslaughter or "involuntary" manslaughter. *State v. Carman*, 292 Neb. 207, 872 N.W.2d 559 (2015).

An intentional killing can be manslaughter, if it results from a sudden quarrel. Thus, attempted sudden quarrel manslaughter can be considered a crime. *State v. Smith*, 19 Neb. App. 708, 811 N.W.2d 720 (2012).

### **28-308.**

There is no double jeopardy violation where a defendant is charged and convicted of first degree assault under this section and second degree assault under section 28-309(1)(a). *State v. Ballew*, 291 Neb. 577, 867 N.W.2d 571 (2015).

### **28-309.**

There is no double jeopardy violation where a defendant is charged and convicted of first degree assault under section 28-308 and second degree assault under subdivision (1)(a) of this section. *State v. Ballew*, 291 Neb. 577, 867 N.W.2d 571 (2015).

### **28-319.01.**

For purposes of the authorized limits of an indeterminate sentence, both "mandatory minimum" as used in subsection (2) of this section and "minimum" as used in section 28-105 in regard to a Class IB felony mean the lowest authorized minimum term of the indeterminate sentence. *State v. Russell*, 291 Neb. 33, 863 N.W.2d 813 (2015).

The mandatory minimum sentence required by subsection (2) of this section affects both probation and parole: Probation is not authorized, and the offender will not receive any good time credit until the full amount of the mandatory minimum term of imprisonment has been served. *State v. Russell*, 291 Neb. 33, 863 N.W.2d 813 (2015).

The range of penalties for sexual assault of a child in the first degree, first offense, under subsection (2) of this section, is 15 years' to life imprisonment. *State v. Russell*, 291 Neb. 33, 863 N.W.2d 813 (2015).

## ANNOTATIONS

### **28-320.01.**

The exact date of the commission of an offense is not a substantive element of first, second, or third degree sexual assault of a child. *State v. Samayoa*, 292 Neb. 334, 873 N.W.2d 449 (2015).

### **28-323.**

Multiple counts of third degree domestic assault under this section are not the "same offense" for double jeopardy purposes if a break occurred between the alleged assaults that allowed the defendant to form anew the required criminal intent. *State v. Kleckner*, 291 Neb. 539, 867 N.W.2d 273 (2015).

### **28-636.**

"Person" in the context of the term "[p]ersonal identification document" for purposes of this section means a real person and not a fictitious person. *State v. Covey*, 290 Neb. 257, 859 N.W.2d 558 (2015).

### **28-638.**

"Person" in the context of the term "personal identifying information" for purposes of this section means a real person and not a fictitious person. *State v. Covey*, 290 Neb. 257, 859 N.W.2d 558 (2015).

### **28-706.**

To prove that a defendant has failed, refused, or neglected to provide proper support under this section, the State is not required to prove that a defendant has an ability to pay; however, a defendant may present evidence of inability to pay in order to disprove intent. *State v. Erpelding*, 292 Neb. 351, 874 N.W.2d 265 (2015).

### **28-813.01.**

A person knowingly possesses child pornography in violation of this section when he or she knows of the nature or character of the material and of its presence and has dominion or control over it. *State v. Mucia*, 292 Neb. 1, 871 N.W.2d 221 (2015).

### **28-905.**

This section does not require that the jury have a separate instruction for an attempt to arrest or issue a citation. This element is inherent in the criminal offense as provided in this section. *State v. Armagost*, 291 Neb. 117, 864 N.W.2d 417 (2015).

### **28-1409.**

The policy underlying this section supports its application in situations where a suspect has resisted a pat-down search, even where that pat-down search is later found to be unconstitutional. *State v. Wells*, 290 Neb. 186, 859 N.W.2d 316 (2015).

### **28-1463.02.**

A defendant can be found guilty of creating or possessing child pornography beyond a reasonable doubt even when the actual depiction at issue is unavailable at trial. *State v. Smith*, 292 Neb. 434, 873 N.W.2d 169 (2016).

In order to show "erotic nudity," as defined in subsection (3) of this section, the State must prove, first, that the depiction displays a human's genitals or a human's pubic area or female breast area, and second, that the depiction was created for the purpose of real or simulated overt sexual gratification or sexual stimulation. *State v. Smith*, 292 Neb. 434, 873 N.W.2d 169 (2016).

To determine whether photographs were taken for the purpose of real or simulated overt sexual gratification or sexual stimulation, an appellate court considers the following nonexclusive factors: (1) whether the focal point of the visual depiction is on the child's genitalia or pubic area; (2) whether the setting of the visual depiction is sexually suggestive, i.e., in a place or pose generally associated with sexual activity; (3) whether the child is depicted in an unnatural pose, or in inappropriate attire, considering the age of the child; (4) whether the child is fully or partially clothed, or nude; (5) whether the visual depiction suggests sexual coyness or willingness to

## ANNOTATIONS

engage in sexual activity; and (6) whether the visual depiction is intended or designed to elicit a sexual response in the viewer. *State v. Smith*, 292 Neb. 434, 873 N.W.2d 169 (2016).

### 29-411.

Given the facts viewed most favorably to the plaintiff, the defendant officer's statement identifying himself as a sheriff's deputy was insufficient to announce his office and purpose: The officer was dressed in jeans, a sweatshirt, and a ball cap, did not show his badge, displayed a weapon upon entry into the home, and failed to produce a copy of the warrant before or after his forced entry into the home. *Waldron v. Roark*, 292 Neb. 889, 874 N.W.2d 850 (2016).

### 29-901.

An appearance bond (less any applicable statutory fee) must be refunded to the defendant rather than peremptorily applied to costs where the defendant appeared as ordered and judgment had been entered against him. *State v. Zamarron*, 19 Neb. App. 349, 806 N.W.2d 128 (2011).

### 29-1207.

As a general rule, a trial court's determination as to whether charges should be dismissed on statutory speedy trial grounds is a factual question which will be affirmed on appeal unless clearly erroneous. *State v. Henshaw*, 19 Neb. App. 663, 812 N.W.2d 913 (2012).

Because the filing of a defendant's pro se plea in abatement tolled the statutory speedy trial clock, and the excludable period continued until the court ruled on the plea in abatement, when the defense counsel filed a subsequent plea in abatement, the clock was already stopped and such filing had no effect on the speedy trial calculation. *State v. Henshaw*, 19 Neb. App. 663, 812 N.W.2d 913 (2012).

If defendant is not brought to trial before the running of the statutory speedy trial time period, as extended by excludable periods, he or she shall be entitled to his or her absolute discharge. *State v. Henshaw*, 19 Neb. App. 663, 812 N.W.2d 913 (2012).

Once defendant's pro se plea in abatement was filed by the clerk of the district court, the statutory speedy trial clock stopped until the trial court disposed of the pretrial motion, and it was irrelevant for speedy trial purposes whether defendant's plea in abatement was properly filed. *State v. Henshaw*, 19 Neb. App. 663, 812 N.W.2d 913 (2012).

Speedy trial statute excludes all time between the filing of a defendant's pretrial motions and their disposition, regardless of the promptness or reasonableness of the delay; the excludable period commences on the day immediately after the filing of a defendant's pretrial motion, and final disposition occurs on the date the motion is granted or denied. *State v. Henshaw*, 19 Neb. App. 663, 812 N.W.2d 913 (2012).

To calculate the time for statutory speedy trial purposes, a court must exclude the day the information was filed, count forward 6 months, back up 1 day, and then add any excludable time to determine the last day the defendant can be tried. *State v. Henshaw*, 19 Neb. App. 663, 812 N.W.2d 913 (2012).

Under subdivision (4)(b) of this section, the period of delay resulting from a continuance granted at the request or with the consent of the defendant or his counsel shall be excluded from the calculation of the time for trial. *State v. Mortensen*, 19 Neb. App. 220, 809 N.W.2d 793 (2011).

Under subsection (1) of this section, every person indicted or informed against for any offense shall be brought to trial within 6 months, unless the 6 months are extended by any period to be excluded in computing the time for trial. *State v. Mortensen*, 19 Neb. App. 220, 809 N.W.2d 793 (2011).

### 29-1208.

If a defendant is not brought to trial before the running of the statutory speedy trial time period, as extended by excludable periods, he or she shall be entitled to his or her absolute discharge. *State v. Henshaw*, 19 Neb. App. 663, 812 N.W.2d 913 (2012); *State v. Mortensen*, 19 Neb. App. 220, 809 N.W.2d 793 (2011).

### 29-1808.

The charging of alternative means of committing the same crime that are incongruous as a matter of law is a defect apparent on the face of the record. *State v. McIntyre*, 290 Neb. 1021, 863 N.W.2d 471 (2015).

## ANNOTATIONS

### **29-1913.**

There is no obligation for the district court to suppress the evidence without a motion that the specific evidence be made available to conduct like tests or analyses. In the absence of any discovery motion, the trial court cannot know the precise issue presented and make the necessary factual findings in determining whether an order of discovery should be granted. And without a proper discovery order and a claim of the violation of such order, the court cannot properly determine whether the evidence subject to the order was, in fact, unavailable and whether it was unavailable due to neglect or intentional alteration. *State v. Henry*, 292 Neb. 834, 875 N.W.2d 374 (2016).

Under the plain language of this section, exclusion of the described tests or analyses is a mandatory sanction for violation of the discovery order issued under this section, in the event of unavailability due to neglect or intentional alteration as described in the section. *State v. Henry*, 292 Neb. 834, 875 N.W.2d 374 (2016).

### **29-2022.**

Prejudice arising from the failure to comply with the requirements of this section does not alter the prejudice analysis required by *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). *State v. Sellers*, 290 Neb. 18, 858 N.W.2d 577 (2015).

### **29-2204.**

For purposes of the authorized limits of an indeterminate sentence, both "mandatory minimum" as used in section 28-319.01(2) and "minimum" as used in section 28-105 in regard to a Class IB felony mean the lowest authorized minimum term of the indeterminate sentence. *State v. Russell*, 291 Neb. 33, 863 N.W.2d 813 (2015).

### **29-2221.**

The language of subsection (1) of this section does not require that all convictions enhanced pursuant to this section be served consecutively to each other. Unless the offense for which the defendant was convicted requires the sentence to run consecutively to other convictions, the court retains its discretion to impose a concurrent sentence. *State v. Lantz*, 290 Neb. 757, 861 N.W.2d 728 (2015).

### **29-2281.**

In imposing a sentence, the court must state the precise terms of the sentence. Such requirement of certainty and precision applies to criminal sentences containing restitution orders, and a court's restitution order must inform the defendant whether the restitution must be made immediately, in specified installments, or within a specified period of time, not to exceed 5 years, as required under this section. *State v. Esch*, 290 Neb. 88, 858 N.W.2d 219 (2015).

Despite the existence of a plea agreement involving restitution, the trial court still must give meaningful consideration to the defendant's ability to pay the agreed-upon restitution. *State v. Mick*, 19 Neb. App. 521, 808 N.W.2d 663 (2012).

### **29-2315.01.**

By its language, this section clearly requires that an error proceeding cannot be brought until after a "final order" has been entered. The test of finality of an order or judgment for the purpose of appeal under this section is whether the particular proceeding or action was terminated by the order or judgment. *State v. Warner*, 290 Neb. 954, 863 N.W.2d 196 (2015).

### **29-2316.**

Whether this section prevents an appellate court from reversing the judgment of the trial court turns on whether the trial court placed the defendant in jeopardy, not whether the Double Jeopardy Clause bars further action. *State v. Kleckner*, 291 Neb. 539, 867 N.W.2d 273 (2015).

### **29-2407.**

Although a judgment for costs in a criminal case is a lien upon a defendant's property, Nebraska statutes do not specifically authorize a setoff of costs owed to the court against proceeds of the defendant's bond. *State v. Zamarron*, 19 Neb. App. 349, 806 N.W.2d 128 (2011).

## ANNOTATIONS

### 29-2412.

The credit authorized under former subsection (3) of this section is limited to the situation where the person is held in custody for nonpayment and does not provide for a \$90-per-day credit against costs for "extra" time incarcerated prior to sentencing. *State v. Zamarron*, 19 Neb. App. 349, 806 N.W.2d 128 (2011).

### 29-2801.

A parolee may seek relief through Nebraska's habeas corpus statute. *Caton v. State*, 291 Neb. 939, 869 N.W.2d 911 (2015).

The failure to attach a copy of the relevant commitment order to a petition for a writ of habeas corpus, as required by this section, does not prevent a court from exercising jurisdiction over that petition. *O'Neal v. State*, 290 Neb. 943, 863 N.W.2d 162 (2015).

### 29-3001.

The issuance of a mandate by a Nebraska appellate court is a definitive determination of the "conclusion of a direct appeal," and the "date the judgment of conviction became final," for purposes of subdivision (4)(a) of this section. *State v. Huggins*, 291 Neb. 443, 866 N.W.2d 80 (2015).

The 1-year period of limitation set forth in subsection (4) of this section is not a jurisdictional requirement and instead is in the nature of a statute of limitations. *State v. Crawford*, 291 Neb. 362, 865 N.W.2d 360 (2015).

### 29-3003.

When presented with a motion for postconviction relief that exists simultaneously with a motion seeking relief under another remedy, a court must dismiss the postconviction motion without prejudice when the allegations, if true, would constitute grounds for relief under the other remedy sought; the question is not whether the petitioner believes he or she is entitled to the other remedy. *State v. Harris*, 292 Neb. 186, 871 N.W.2d 762 (2015).

### 30-810.

This section does not govern the distribution of proceeds from a survival claim brought on behalf of the decedent's estate, which continued a decedent's cause of action for the decedent's injuries that occurred before death. *In re Estate of Panec*, 291 Neb. 46, 864 N.W.2d 219 (2015).

### 30-1601.

Subsection (2) of this section authorizes a protected person's close family members to appeal from a final order in a conservatorship proceeding if they filed an objection and the county court appointed a conservator. *In re Conservatorship of Franke*, 292 Neb. 912, 875 N.W.2d 408 (2016).

When a protected person dies pending an appeal initiated by a close family member who filed an objection, whether the protected person needed a conservator is a moot issue unless the family member asks the appellate court to take judicial notice of a proceeding that shows the issue is not moot. Absent that showing, the protected person's death abates the family member's appeal, but it does not extinguish the cause of action or affect the validity of the underlying orders appointing a conservator. *In re Conservatorship of Franke*, 292 Neb. 912, 875 N.W.2d 408 (2016).

### 30-2314.

The concepts of section 30-2722 should inform the interpretation of this section regarding the evidence necessary to establish the source of property owned by the surviving spouse. *In re Estate of Ross*, 19 Neb. App. 355, 810 N.W.2d 435 (2011).

When there is reason to doubt the credibility of the surviving spouse's testimony, the court need not accept his or her testimony that the source of the accounts was other than the decedent. *In re Estate of Ross*, 19 Neb. App. 355, 810 N.W.2d 435 (2011).

## ANNOTATIONS

### 30-2431.

Contestants of a will have the burden of establishing undue influence and carry the ultimate burden of persuasion. In re Estate of Clinger, 292 Neb. 237, 872 N.W.2d 37 (2015).

### 30-2619.

In a guardianship proceeding, where an objector has no concerns for the ward's welfare but only concerns of its own potential financial expectancy, such concerns do not give the objector standing to challenge a guardianship as "any person interested in [the ward's] welfare" under this section. In re Guardianship & Conservatorship of Barnhart, 290 Neb. 314, 859 N.W.2d 856 (2015).

### 30-2633.

Where the objector has an interest in the welfare of the ward because the objector would have an obligation to support the ward during his or her lifetime if the ward's funds are mismanaged, then that objector would have standing to contest the conservatorship. In re Guardianship & Conservatorship of Barnhart, 290 Neb. 314, 859 N.W.2d 856 (2015).

### 30-2645.

Designation as a beneficiary in a will, prior to the testator's death, does not alone establish enough financial interest in a ward's welfare to establish standing to contest a conservatorship. In re Guardianship & Conservatorship of Barnhart, 290 Neb. 314, 859 N.W.2d 856 (2015).

In a conservatorship proceeding, where an objector has no concerns for the ward's welfare but only concerns of its own potential financial expectancy, such concerns do not give the objector standing to challenge a guardianship as "[a]ny person interested in the [ward's] welfare" under this section. In re Guardianship & Conservatorship of Barnhart, 290 Neb. 314, 859 N.W.2d 856 (2015).

### 30-2722.

The concepts of this section should inform the interpretation of section 30-2314 regarding the evidence necessary to establish the source of property owned by the surviving spouse. In re Estate of Ross, 19 Neb. App. 355, 810 N.W.2d 435 (2011).

### 30-2726.

The purpose of this section is to alert the personal representative of the need to recover nonprobate assets and to trigger the personal representative's duty and authority to initiate proceedings to do so. In re Estate of Lorenz, 292 Neb. 543, 873 N.W.2d 396 (2016).

This section protects the beneficiaries of such nonprobate assets from incurring liability for claims made against the estate more than 1 year after the death of the decedent. In re Estate of Lorenz, 292 Neb. 543, 873 N.W.2d 396 (2016).

This section requires more than notice—it requires a written demand upon the personal representative before a proceeding to recover nonprobate assets may be commenced. In re Estate of Lorenz, 292 Neb. 543, 873 N.W.2d 396 (2016).

### 30-3805.

A reasonable person acting in good faith and in the interests of the beneficiaries would not wait until an annual report was due before informing the beneficiaries that the trust assets were in danger of being lost, but would instead inform the beneficiaries of the material facts immediately in order to allow them to protect their interests. Rafert v. Meyer, 290 Neb. 219, 859 N.W.2d 332 (2015).

An attorney's duty to report any danger to the trust property becomes immediate when he or she knows or should know that such danger exists rather than when an annual report is due. Rafert v. Meyer, 290 Neb. 219, 859 N.W.2d 332 (2015).

## ANNOTATIONS

In drafting a trust, an attorney cannot abrogate his or her duty to administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with the Nebraska Uniform Trust Code. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

In drafting a trust, an attorney cannot abrogate his or her duty under this section to keep beneficiaries of the trust reasonably informed of the material facts necessary for them to protect their interests. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

The beneficiaries alleged sufficient facts for a court to find that the trustee acted in bad faith or reckless indifference to the purposes of the trust or the interests of the beneficiaries by providing a false address to the insurers of life insurance policies, which were the sole trust property. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

The Nebraska Uniform Trust Code provides deference to the terms of the trust, but that deference does not extend to those duties described in this section or otherwise required by statute. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

### **30-3841.**

A document by which a settlor purports to revoke a revocable trust is a term of that trust within the meaning of this section. *In re Trust of O'Donnell*, 19 Neb. App. 696, 815 N.W.2d 640 (2012).

### **30-3866.**

A reasonable person acting in good faith and in the interests of the beneficiaries would not wait until an annual report was due before informing the beneficiaries that the trust assets were in danger of being lost, but would instead inform the beneficiaries of the material facts immediately in order to allow them to protect their interests. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

In drafting a trust, an attorney cannot abrogate his or her duty to administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with the Nebraska Uniform Trust Code. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

The beneficiaries alleged sufficient facts for a court to find that the trustee acted in bad faith or reckless indifference to the purposes of the trust or the interests of the beneficiaries by providing a false address to the insurers of life insurance policies, which were the sole trust property. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

### **30-3878.**

A reasonable person acting in good faith and in the interests of the beneficiaries would not wait until an annual report was due before informing the beneficiaries that the trust assets were in danger of being lost, but would instead inform the beneficiaries of the material facts immediately in order to allow them to protect their interests. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

An attorney's duty to report any danger to the trust property becomes immediate when he or she knows or should know that such danger exists rather than when an annual report is due. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

In drafting a trust, an attorney cannot abrogate his or her duty under this section to keep beneficiaries of the trust reasonably informed of the material facts necessary for them to protect their interests. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

The beneficiaries alleged sufficient facts for a court to find that the trustee's actions in providing a false address to the insurers of life insurance policies, which were the sole trust property, prevented the beneficiaries from receiving material facts necessary for them to protect their interests. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

### **30-3897.**

An exculpatory clause in a trust agreement is invalid where the attorney who drafted the trust agreement never met with the settlor or explained the terms of the trust and the respective duties of each party. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

## ANNOTATIONS

The beneficiaries alleged sufficient facts for a court to find that the trustee acted in bad faith or reckless indifference to the purposes of the trust or the interests of the beneficiaries by providing a false address to the insurers of life insurance policies, which were the sole trust property. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

### **34-301.**

An action to ascertain and permanently establish corners and boundaries of land under this section is an equity action. *Oppliger v. Vineyard*, 19 Neb. App. 172, 803 N.W.2d 786 (2011).

Nebraska law provides that boundaries that have been mutually recognized and acquiesced in for a period of 10 years can be legal boundaries. *Oppliger v. Vineyard*, 19 Neb. App. 172, 803 N.W.2d 786 (2011).

### **36-103.**

To establish the part performance exception to the statute of frauds, the alleged acts of performance must speak for themselves. *Ficke v. Wolken*, 291 Neb. 482, 868 N.W.2d 305 (2015).

### **37-729.**

A lake owners' association, and not its members who owned homes within the association, owned the lake, and thus, a cause of action by a member's guest against a member and her parents for an alleged failure to warn of the dangerous condition of the lake was not one for premises liability; therefore, Nebraska's Recreation Liability Act did not apply to bar recovery against the member for catastrophic injuries sustained when the guest dove into the lake from the member's pontoon. *Hodson v. Taylor*, 290 Neb. 348, 860 N.W.2d 162 (2015).

The members of a lake owners' association had no control over the lake and, thus, were not occupants of the lake, as required for a cause of action brought by a member's guest for an alleged failure to warn of the dangerous condition of the lake to sound in premises liability; therefore, Nebraska's Recreation Liability Act did not apply to bar the guest's recovery against the member for catastrophic injuries sustained when the guest dove into the lake from the member's pontoon. *Hodson v. Taylor*, 290 Neb. 348, 860 N.W.2d 162 (2015).

### **37-730.**

The Recreation Liability Act applies to bar liability only in premises liability cases. *Hodson v. Taylor*, 290 Neb. 348, 860 N.W.2d 162 (2015).

### **39-1327.**

Any rights or claims to air, light, and view that were held by a previous property owner terminate with the purchase of that portion of the property by the department. *Craig v. State*, 19 Neb. App. 78, 805 N.W.2d 663 (2011).

### **39-1801.**

A motorist commits a misdemeanor by proceeding down a county road that has been temporarily closed and has suitable barricades and signs posted, thus giving an officer probable cause to stop the vehicle. *State v. Morrissey*, 19 Neb. App. 590, 810 N.W.2d 195 (2012).

### **42-351.**

An order helping a party pay for his or her attorney's work on appeal is an order in aid of the appeal process under subsection (2) of this section. *Brozek v. Brozek*, 292 Neb. 681, 874 N.W.2d 17 (2016).

### **42-365.**

Equitable property division is a three-step process. The first step is to classify the parties' property as marital or nonmarital. The second step is to value the marital assets and liabilities of the parties. The third step is to calculate and divide the net marital estate between the parties in accordance with the principles contained in this section. *Gangwish v. Gangwish*, 267 Neb. 901, 678 N.W.2d 503 (2004); *Mathews v. Mathews*, 267 Neb. 604, 676 N.W.2d 42 (2004); *Sughrue v. Sughrue*, 19 Neb. App. 912, 815 N.W.2d 210 (2012); *Ging v. Ging*, 18 Neb. App. 145, 775 N.W.2d 479 (2009).



## ANNOTATIONS

In addition to the specific criteria listed in this section, in dividing property and considering alimony upon a dissolution of marriage, a court is to consider the income and earning capacity of each party, as well as the general equities of each situation. *Titus v. Titus*, 19 Neb. App. 751, 811 N.W.2d 318 (2012); *Grams v. Grams*, 9 Neb. App. 994, 624 N.W.2d 42 (2001).

Factors which should be considered by a court in determining alimony include: (1) The circumstances of the parties; (2) the duration of the marriage; (3) the history of contributions to the marriage, including contributions to the care and education of the children, and interruption of personal careers or educational opportunities; and (4) the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children in the custody of each party. *Zoubenko v. Zoubenko*, 19 Neb. App. 582, 813 N.W.2d 506 (2012).

The criteria listed in this statute are not an exhaustive list, and the income and earning capacity of each party as well as the general equities of each situation must be considered. *Zoubenko v. Zoubenko*, 19 Neb. App. 582, 813 N.W.2d 506 (2012).

### **42-366.**

Although the actual appreciation or increase in value of a state employee's pension occurred during the marriage, such increase was not due to the efforts or contribution of marital funds by the parties during the marriage, but, rather, was guaranteed prior to the marriage by operation of section 84-1301(17). Therefore, such increase was not marital property. *Coufal v. Coufal*, 291 Neb. 378, 866 N.W.2d 74 (2015).

An increase in value in the separate property of a spouse, not attributable in any manner to any contribution of funds, property, or effort by either of the spouses, constitutes separate property. *Coufal v. Coufal*, 291 Neb. 378, 866 N.W.2d 74 (2015).

In order to determine what portion of a party's retirement account is nonmarital property in a divorce, the court examines to what extent the appreciation in the separate premarital portion of the retirement account was caused by the funds, property, or efforts of either spouse. *Coufal v. Coufal*, 291 Neb. 378, 866 N.W.2d 74 (2015).

### **43-247.**

Evidence that a child's mother took an unprescribed morphine pill was insufficient to adjudicate the child when there was no evidence that the child was affected by the mother's ingestion of the pill or any other evidence that the mother's taking the pill placed the child at risk for harm. *In re Interest of Taeven Z.*, 19 Neb. App. 831, 812 N.W.2d 313 (2012).

Evidence that a nearly 2-year-old child was left unsupervised outside for a few minutes was insufficient to establish a definite risk of future harm. *In re Interest of Taeven Z.*, 19 Neb. App. 831, 812 N.W.2d 313 (2012).

### **43-274.**

The mandate that allegations under section 43-247(1), (2), and (4) be made with the same specificity as a criminal complaint merely reconciles the pleading practice regarding juvenile offenders with that of adult criminals. *In re Interest of Taeven Z.*, 19 Neb. App. 831, 812 N.W.2d 313 (2012).

The pleading standard for allegations under section 43-247(3) stems from the requirements of due process, and the factual allegations must give a parent notice of the bases for seeking to prove that the child is within the meaning of section 43-247(3)(a). *In re Interest of Taeven Z.*, 19 Neb. App. 831, 812 N.W.2d 313 (2012).

A guardian ad litem appointed by the juvenile court does not have the authority to initiate a juvenile court case by filing a petition alleging that a child is within the meaning of section 43-247(3)(a). *In re Interest of David M. et al.*, 19 Neb. App. 399, 808 N.W.2d 357 (2011).

### **43-279.01.**

A juvenile court need not necessarily advise a parent during the parent's initial appearance in court, or during an initial detention hearing, of the nature of the proceedings, of the parent's rights, or of the possible consequences after adjudication, pursuant to the statutory language. Instead, a juvenile court must provide this advisement prior to or at an adjudication hearing where a parent enters a plea to the allegations in the petition. *In re Interest of Damien S.*, 19 Neb. App. 917, 815 N.W.2d 648 (2012).

## ANNOTATIONS

An incarcerated father's due process rights were violated in a proceeding in which a motion was made to terminate his parental rights where he was not represented by counsel, he was not present at the adjudication and termination hearing, and he did not waive those rights, and the juvenile court otherwise failed to provide him an opportunity to refute or defend against the allegations of the petition, such as implementing procedures to afford him an opportunity to participate in the hearing, confront or cross-examine adverse witnesses, or present evidence on his behalf; although the juvenile court issued transport orders and a summons to enable the father to attend, the court not only took no further action upon receipt of the sheriff's request for a writ of habeas corpus rather than a transport order, but it also proceeded with the hearing without comment on the record as to either the father's or his attorney's absence. *In re Interest of Davonest D. et al.*, 19 Neb. App. 543, 809 N.W.2d 819 (2012).

### **43-283.01.**

Once a plan of reunification has been ordered to correct the conditions underlying an adjudication, the plan must be reasonably related to the objective of reuniting the parents with the children. *In re Interest of Ethan M.*, 19 Neb. App. 259, 809 N.W.2d 804 (2011).

### **43-285.**

The State has the burden of proving that a case plan proposed by the Department of Health and Human Services is in the child's best interests. *In re Interest of Ethan M.*, 19 Neb. App. 259, 809 N.W.2d 804 (2011).

### **43-292.**

In order to terminate an individual's 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 children's best interests. *In re Interest of Joshua R. et al.*, 265 Neb. 374, 657 N.W.2d 209 (2003); *In re Interest of Michael B. et al.*, 258 Neb. 545, 604 N.W.2d 405 (2000); *In re Interest of Kalie W.*, 258 Neb. 46, 601 N.W.2d 753 (1999); *In re Interest of Emerald C. et al.*, 19 Neb. App. 608, 810 N.W.2d 750 (2012); *In re Interest of Stacey D. & Shannon D.*, 12 Neb. App. 707, 684 N.W.2d 594 (2004).

Generally, when termination of parental rights is sought under subsections of this section other than subsection (7), the evidence adduced to prove the statutory grounds for termination will also be highly relevant to the best interests of the juvenile. *In re Interest of Emerald C. et al.*, 19 Neb. App. 608, 810 N.W.2d 750 (2012).

If a parent has been afforded procedural due process for a hearing to terminate parental rights, allowing a parent who is incarcerated or otherwise confined in custody of a government to attend the termination hearing is within the discretion of the trial court, whose opinion on appeal will be upheld in the absence of an abuse of discretion. *In re Interest of Davonest D. et al.*, 19 Neb. App. 543, 809 N.W.2d 819 (2012).

Parental physical presence is unnecessary for a hearing to terminate parental rights, provided that the parent has been afforded procedural due process for the hearing. *In re Interest of Davonest D. et al.*, 19 Neb. App. 543, 809 N.W.2d 819 (2012).

### **43-292.01.**

A guardian ad litem appointed for a parent pursuant to this section is entitled to participate fully in the proceeding to terminate parental rights. *In re Interest of Emerald C. et al.*, 19 Neb. App. 608, 810 N.W.2d 750 (2012).

### **43-1314.**

A foster parent has the right to participate under this section whether or not the foster parent is a party in the juvenile case. *In re Interest of Enyce J. & Eternity M.*, 291 Neb. 965, 870 N.W.2d 413 (2015).

A foster parent's right to participate under this section does not extend to discovery, questioning, cross-examining, or calling witnesses beyond what is personally applicable to the foster parent's own qualifications. *In re Interest of Enyce J. & Eternity M.*, 291 Neb. 965, 870 N.W.2d 413 (2015).

### **43-1411.**

An emotional bond with one's biological father is not the type of relationship contemplated by this section, nor is it the type of support with which the State has a reasonable interest. *Bryan M. v. Anne B.*, 292 Neb. 725, 874 N.W.2d 824 (2016).

## ANNOTATIONS

This section does not violate the Equal Protection Clause because a mother can bring paternity actions on behalf of the child for up to 18 years, while fathers have only 4 years to bring paternity actions; this section treats mothers and putative fathers identically by imposing a 4-year limitations period on paternity actions brought by parents asserting their own rights. *Bryan M. v. Anne B.*, 292 Neb. 725, 874 N.W.2d 824 (2016).

### **43-1412.01.**

This section permits, but does not require, a court to set aside a child support obligation when paternity has been disestablished. It does not authorize any change in child support without such disestablishment of paternity. *Stacy M. v. Jason M.*, 290 Neb. 141, 858 N.W.2d 852 (2015).

### **43-1504.**

A determination that the proceeding is at an advanced stage is no longer a valid basis for finding good cause to deny a motion to transfer jurisdiction to a tribal court. *In re Interest of Tavian B.*, 292 Neb. 804, 874 N.W.2d 456 (2016).

A denial of a transfer to tribal court under the Indian Child Welfare Act is reviewed for an abuse of discretion. *In re Interest of Melaya F. & Melysse F.*, 19 Neb. App. 235, 810 N.W.2d 429 (2011); *In re Interest of Brittany C. et al.*, 13 Neb. App. 411, 693 N.W.2d 592 (2005).

That a state court may take jurisdiction under the Indian Child Welfare Act does not necessarily mean that it should do so, because the court should consider the rights of the child, the rights of the tribe, and the conflict of law principles, and should balance the interests of the state and the tribe. *In re Interest of Melaya F. & Melysse F.*, 19 Neb. App. 235, 810 N.W.2d 429 (2011); *In re Interest of Brittany C. et al.*, 13 Neb. App. 411, 693 N.W.2d 592 (2005).

The party opposing a transfer of jurisdiction to the tribal courts under the Indian Child Welfare Act has the burden of establishing that good cause not to transfer the matter exists. *In re Interest of Melaya F. & Melysse F.*, 19 Neb. App. 235, 810 N.W.2d 429 (2011); *In re Interest of Brittany C. et al.*, 13 Neb. App. 411, 693 N.W.2d 592 (2005).

### **43-1508.**

Good cause for deviation from the statutory placement preferences was not shown where the record showed that the Department of Health and Human Services was unsuccessful in locating relative placements for the children but did not detail what efforts had been made, the record did not show why the children had not been placed with intervenor grandmother, the grandmother made no argument that such placement should occur and did not assert that the children's nonrelative placements were not in their best interests, and the record did not show if the children's placements met any of the other statutory claims of preference. *In re Interest of Enrique P. et al.*, 19 Neb. App. 778, 813 N.W.2d 513 (2012).

### **43-1802.**

Pursuant to subsection (2) of this section, a grandparent seeking visitation over the objection of a natural parent must satisfy the statutory burden of proof to establish the existence of a significant beneficial relationship with the child and that it will be in the best interests of the child to continue the relationship; the notion that a relationship with biological grandparents is axiomatically in the best interests of a child is not sufficient. *Vrtatko v. Gibson*, 19 Neb. App. 83, 800 N.W.2d 676 (2011).

### **43-2924.**

The Parenting Act applied because the action was filed after January 1, 2008, and because parenting functions for a child were at issue. *Citta v. Facka*, 19 Neb. App. 736, 812 N.W.2d 917 (2012).

### **43-2929.**

Although the trial court's order did not attach a parenting plan and did not address several determinations under subdivision (1)(b) of this section, such error did not deprive the appellate court of jurisdiction where the order addressed custody, telephone visitation, and alternating weekend and holiday visitation. *Citta v. Facka*, 19 Neb. App. 736, 812 N.W.2d 917 (2012).

## ANNOTATIONS

### **43-2932.**

Regardless of when the parent was convicted of third degree domestic assault, where the district court was presented with evidence of that conviction during modification proceedings, it was required to comply with this section in making a custody determination. *Flores v. Flores-Guerrero*, 290 Neb. 248, 859 N.W.2d 578 (2015).

Threatening to cause or actually causing bodily injury to a spouse or former spouse qualifies as domestic intimate partner abuse. *Flores v. Flores-Guerrero*, 290 Neb. 248, 859 N.W.2d 578 (2015).

Where a preponderance, or the greater weight, of the evidence demonstrates that a parent has committed one of the listed actions, the obligations of this section are mandatory. *Flores v. Flores-Guerrero*, 290 Neb. 248, 859 N.W.2d 578 (2015).

### **45-1,112.**

The broad language in the definition of credit agreements precludes recovery for a credit agreement based on the promissory estoppel doctrine, which is wholly dependent on reliance on a promise or assurance. *Synergy4 Enters. v. Pinnacle Bank*, 290 Neb. 241, 859 N.W.2d 552 (2015).

### **45-1,113.**

The credit agreement statute of frauds is not coextensive with the general statute of frauds with all the common-law exceptions. *Synergy4 Enters. v. Pinnacle Bank*, 290 Neb. 241, 859 N.W.2d 552 (2015).

This section supersedes the common-law theory of promissory estoppel insofar as it applies to unwritten credit agreements or oral promises to loan money or extend credit. *Synergy4 Enters. v. Pinnacle Bank*, 290 Neb. 241, 859 N.W.2d 552 (2015).

### **46-229.04.**

In a determination of whether an appropriation should be canceled for nonuse, once it is established that the appropriation has not been used for more than 5 consecutive years, it is the burden of the interested party to present evidence that there was sufficient cause for nonuse. *In re Appropriation A-7603*, 291 Neb. 678, 868 N.W.2d 314 (2015).

### **47-502.**

This section is applicable to time spent in the county jail awaiting sentencing. *State v. Zamarron*, 19 Neb. App. 349, 806 N.W.2d 128 (2011).

### **48-118.02.**

When an employer has a subrogation interest in the recovery in a worker's third-party claim, the party bringing the claim or prosecuting the suit is entitled to deduct from any amount recovered the reasonable expenses of making such recovery, including a reasonable sum for attorney fees. *Sterner v. American Fam. Ins. Co.*, 19 Neb. App. 339, 805 N.W.2d 696 (2011).

### **48-118.04.**

Statutory subrogation under this section requires a fair and equitable distribution to be determined by the trial court under the facts of each case. *Sterner v. American Fam. Ins. Co.*, 19 Neb. App. 339, 805 N.W.2d 696 (2011).

Third-party settlements are void unless agreed to in writing by the employee, or the employee's personal representative, and the employer, or the employer's insurer. *Sterner v. American Fam. Ins. Co.*, 19 Neb. App. 339, 805 N.W.2d 696 (2011).

This section does not require an injured worker to be "made whole" before a subrogated compensation carrier is entitled to a portion of the settlement. *Sterner v. American Fam. Ins. Co.*, 19 Neb. App. 339, 805 N.W.2d 696 (2011).

## ANNOTATIONS

### 48-120.

Because this section makes the employer liable for reasonable medical and hospital services, the employer must also pay the cost of travel incident to and reasonably necessary for obtaining these services. *Armstrong v. State*, 290 Neb. 205, 859 N.W.2d 541 (2015).

### 48-121.

A worker is not, as a matter of law, totally disabled under this section solely because the worker's disability prevents him or her from working full time. *Armstrong v. State*, 290 Neb. 205, 859 N.W.2d 541 (2015).

### 48-125.

A reasonable controversy between an employer and an employee as to the payment of workers' compensation benefits can be shown by evidence adduced at trial but unknown at the time benefits were denied. *Armstrong v. State*, 290 Neb. 205, 859 N.W.2d 541 (2015).

### 48-133.

When the parties do not dispute the facts concerning reporting and notice, whether such facts constitute sufficient notice to the employer under this section presents a question of law. *Risor v. Nebraska Boiler*, 277 Neb. 679, 765 N.W.2d 170 (2009); *Unger v. Olsen's Ag. Lab.*, 19 Neb. App. 459, 809 N.W.2d 813 (2012).

Where the underlying facts are undisputed, or if disputed, the factual finding of the trial court was not clearly erroneous, the question of whether this section bars the claim is a question of law upon which the appellate court must make a determination independent of that of the trial court. *Unger v. Olsen's Ag. Lab.*, 19 Neb. App. 459, 809 N.W.2d 813 (2012).

### 48-185.

Sufficient evidence supported the Workers' Compensation Court's finding that a workers' compensation claimant's mental illness arose out of a compensable workplace injury sustained during an assault by a patient at the hospital where claimant worked as a nurse and the aggravation of that injury in two further workplace assaults. The claimant was consistently employed for over 15 years before the first assault without significant or relevant physical or mental incident, during which time she worked, was married, and had a family, and the claimant required extensive treatment after the three assaults, including electroconvulsive therapy. *Hynes v. Good Samaritan Hosp.*, 291 Neb. 757, 869 N.W.2d 78 (2015).

### 48-1102.

The threshold fact of consequence in a disability discrimination action is whether the plaintiff is a qualified individual with a disability—i.e., one who can perform the essential functions of the job with or without reasonable accommodations. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

A qualified individual with a disability includes an individual who has been rehabilitated successfully or who is erroneously regarded as engaging in the illegal use of drugs. *Marshall v. EyeCare Specialties*, 291 Neb. 264, 865 N.W.2d 343 (2015).

### 48-1104.

It is unlawful for an employer to discriminate against an individual because of a perceived disability. *Marshall v. EyeCare Specialties*, 291 Neb. 264, 865 N.W.2d 343 (2015).

### 48-1107.01.

Apart from an exception for summary judgments, in a discrimination action brought under the Nebraska Fair Employment Practice Act, a court evaluates the evidence under the three-part burden-shifting framework from *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). Under that framework, (1) the plaintiff has the burden of proving a prima facie case of discrimination; (2) if the plaintiff proves a prima facie case, the burden shifts to the employer to articulate some legitimate, nondiscriminatory reason for the adverse employment action; and (3) if the employer articulates a nondiscriminatory reason for its action, the employee maintains the burden of proving that the stated reason was pretextual. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

## ANNOTATIONS

The threshold fact of consequence in a disability discrimination action is whether the plaintiff is a qualified individual with a disability—i.e., one who can perform the essential functions of the job with or without reasonable accommodations. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

### **48-1107.02.**

A covered employer's failure to make reasonable accommodations for a qualified individual's known physical or mental limitations is discrimination, unless the employer demonstrates that accommodating the individual's limitations would impose an undue hardship on business operations. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

Former subdivision (9)(c) of this section applies to entrance medical examinations of applicants who have been offered employment, whereas former subsection (10) applies to medical examinations of employees. The latter is prohibited unless the employer shows that the examination is job-related and consistent with business necessity. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

Psychological counseling is usually a medical examination under former subsection (10) of this section. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

The court erred in excluding the testimony of an employee's expert that was relevant to establishing the employee's permanent disability, the employer's knowledge of his disability, and whether he had previously performed his job with accommodations that the employer had considered reasonable. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

The threshold fact of consequence in a disability discrimination action is whether the plaintiff is a qualified individual with a disability—i.e., one who can perform the essential functions of the job with or without reasonable accommodations. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

Under former subsection (10) of this section, an employer's doubts about an employee's ability to perform the essential functions of a job may be created by an employee's request for accommodations, frequent absences, or request for leave because of his or her medical condition. Such doubts can also be raised by the employer's knowledge of an employee's behavior that poses a direct threat to the employee or others. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

Under former subsection (10) of this section, to show a business necessity for requiring an employee to submit to a medical examination, an employer has the burden to show that (1) the business necessity is vital to the business; (2) it has a legitimate, nondiscriminatory reason to doubt the employee's ability to perform the essential functions of his or her duties; and (3) the examination is no broader than necessary. There must be significant evidence that could cause a reasonable person to inquire as to whether an employee is still capable of performing his job. An employee's behavior cannot be merely annoying or inefficient to justify an examination; rather, there must be genuine reason to doubt whether that employee can perform job-related functions. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

Under former subsection (10) of this section, whether an employer requires similarly situated employees to submit to a medical examination is relevant to whether the employer considers such examinations a business necessity. But any comparison between employees must be made with an eye to the ultimate inquiry, i.e., the necessity of the examination of the plaintiff employee. An employer's disparate treatment of employees regarding medical examinations cannot override substantial evidence that the employer had good reason to doubt the employee's ability to perform the essential functions of the job. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

### **48-1114.**

A violation of the provision of the Nebraska Fair Employment Practice Act prohibiting employers from discriminating against an employee who has opposed any practice or refused to carry out any action unlawful under federal or state law must include either the employee's opposition to an unlawful practice of the employer or the employee's refusal to honor an employer's demand that the employee do an unlawful act. *Bonn v. City of Omaha*, 19 Neb. App. 874, 814 N.W.2d 114 (2012).

The evil addressed by provision of the Nebraska Fair Employment Practice Act prohibiting employers from discriminating against an employee who has opposed any practice or refused to carry out any action unlawful under federal law or the laws of the state is the exploitation of the employer's power over the employee when used to coerce the employee to endorse, through participation or acquiescence, the unlawful acts of the employer. *Bonn v. City of Omaha*, 19 Neb. App. 874, 814 N.W.2d 114 (2012).

## ANNOTATIONS

The Nebraska Fair Employment Practice Act makes it unlawful for an employer to discriminate against its employee on the basis of the employee's opposition to an unlawful practice. *Bonn v. City of Omaha*, 19 Neb. App. 874, 814 N.W.2d 114 (2012).

The provision of the Nebraska Fair Employment Practice Act prohibiting employers from discriminating against an employee who has opposed any practice or refused to carry out any action unlawful under federal or state law and reasonable policy dictate that an employee's opposition to any unlawful act of the employer, whether or not the employer pressures the employee to actively join in the illegal activity, is protected under the act. *Bonn v. City of Omaha*, 19 Neb. App. 874, 814 N.W.2d 114 (2012).

The public safety auditor for the city did not oppose an unlawful employment practice or refuse to honor the city's demand that she do an unlawful act by publishing her report critical of the police department's practices regarding traffic stops of minorities, as required to support her retaliation claim under the Nebraska Fair Employment Practice Act against the city following her termination; the auditor's claim was based on her contention that she was fired for opposing unlawful practices of the city, but the unlawful practices that the auditor opposed were the alleged discriminatory tactics by some police officers against minority members of the public, rather than unlawful practices of the city. *Bonn v. City of Omaha*, 19 Neb. App. 874, 814 N.W.2d 114 (2012).

The term "practice," as used in the Nebraska Fair Employment Practice Act provision making it unlawful for an employer to discriminate against an employee because he has opposed any practice unlawful under federal or state law, refers to an unlawful practice of the employer, not unlawful or prohibited actions of coemployees. *Bonn v. City of Omaha*, 19 Neb. App. 874, 814 N.W.2d 114 (2012).

### **48-1229.**

An appellate court will consider a payment a wage subject to the Nebraska Wage Payment and Collection Act if (1) it is compensation for labor or services, (2) it was previously agreed to, and (3) all the conditions stipulated have been met. *Timberlake v. Douglas County*, 291 Neb. 387, 865 N.W.2d 788 (2015).

The list of fringe benefits under the former subsection (3) of this section is not exclusive. Under the former subsection (4), "injured on duty" agreed-upon benefits for employees who are injured while performing a high-risk duty are wages that an employee can earn just by rendering the specified services. *Timberlake v. Douglas County*, 291 Neb. 387, 865 N.W.2d 788 (2015).

### **52-157.**

While this section states that damages awarded may include reasonable attorney fees, it does not mandate the award of such fees. *Model Interiors v. 2566 Leavenworth, LLC*, 19 Neb. App. 56, 809 N.W.2d 775 (2011).

### **54-601.**

The various dictionary definitions of "chase," as applied to this section imposing liability on dog owners for damages caused by their dogs chasing any person, i.e., "to follow quickly or persistently in order to catch or harm," "to make run away; drive," or "to go in pursuit," are disjunctive. *Grammer v. Lucking*, 292 Neb. 475, 873 N.W.2d 387 (2016).

### **60-498.01.**

When the motorist made no showing in support of the need for a continuance and refused to request one himself, it was not a violation of his due process rights for the Department of Motor Vehicles hearing officer not to grant a continuance on her own motion so that the motorist could obtain a stay of revocation under subdivision (6)(b) of this section. *Kriz v. Neth*, 19 Neb. App. 819, 811 N.W.2d 739 (2012).

### **60-4,108.**

Under this section, a conviction under subsection (2) may not be used to enhance a conviction under subsection (1) to a second, third, or subsequent offense. *State v. Mendoza-Bautista*, 291 Neb. 876, 869 N.W.2d 339 (2015).

Application of this section is not limited to the operation of a motor vehicle on a public highway. *State v. Frederick*, 291 Neb. 243, 864 N.W.2d 681 (2015).

## ANNOTATIONS

### **60-4,168.**

Convictions or adjudications in other states for driving under the influence of drugs or alcohol apply to this section. *Klug v. Nebraska Dept. of Motor Vehicles*, 291 Neb. 235, 864 N.W.2d 676 (2015).

### **60-670.**

A "Road Closed" sign is a traffic control device. *State v. Morrissey*, 19 Neb. App. 590, 810 N.W.2d 195 (2012).

### **60-682.**

A motorist commits a traffic infraction by driving on a road marked with a road closed barricade and sign, thus giving an officer probable cause to stop the vehicle. *State v. Morrissey*, 19 Neb. App. 590, 810 N.W.2d 195 (2012).

### **60-696.**

Pursuant to subsection (2) of this section, a driver is not criminally liable for leaving the scene of a property damage accident when he does not know that an accident has happened, an injury has been inflicted, or a death has occurred; lack of such knowledge constitutes a proper defense. *State v. Zimmerman*, 19 Neb. App. 451, 810 N.W.2d 167 (2012).

Pursuant to subsection (2) of this section, knowledge that an accident has occurred may be proved by circumstantial evidence in prosecution for leaving the scene of a damage accident; the fact finder may consider all of the facts and circumstances which are indicative of knowledge. *State v. Zimmerman*, 19 Neb. App. 451, 810 N.W.2d 167 (2012).

Pursuant to subsection (2) of this section, the question of lack of knowledge that an accident has happened, an injury has been inflicted, or a death has occurred in prosecution for leaving the scene of a property damage accident is one of fact, not law. *State v. Zimmerman*, 19 Neb. App. 451, 810 N.W.2d 167 (2012).

Subsections (1) and (2) of this section create separate offenses, not one single offense that can be committed in multiple ways. As such, where a defendant is charged with violation of one subsection, a conviction cannot be sustained absent proof of the statutory requirements of that specific subsection. *State v. Harper*, 19 Neb. App. 93, 800 N.W.2d 683 (2011).

### **60-6,115.**

Even if a motorist fell within the exception of the statute, an officer's stop of the vehicle for driving on a road which was clearly marked as being closed would be objectively reasonable because the officer would have probable cause to believe that a traffic violation has occurred. *State v. Morrissey*, 19 Neb. App. 590, 810 N.W.2d 195 (2012).

The exception of this section did not apply to a motorist traveling a road closed only due to weather and road conditions and where neither the motorist nor his passengers lived along the closed road, had reason to travel the road in the normal course of operations, or lacked another route of travel to their destination. *State v. Morrissey*, 19 Neb. App. 590, 810 N.W.2d 195 (2012).

### **60-6,196.**

The elements of driving under the influence and causing serious bodily injury are: (1) The defendant was operating a motor vehicle, (2) the defendant was operating a motor vehicle in violation of this section or section 60-6,197, and (3) the defendant's act of driving under the influence proximately caused serious bodily injury to another person. *State v. Irish*, 292 Neb. 513, 873 N.W.2d 161 (2016).

### **60-6,197.**

The elements of driving under the influence and causing serious bodily injury are: (1) The defendant was operating a motor vehicle, (2) the defendant was operating a motor vehicle in violation of section 60-6,196 or this section, and (3) the defendant's act of driving under the influence proximately caused serious bodily injury to another person. *State v. Irish*, 292 Neb. 513, 873 N.W.2d 161 (2016).



## ANNOTATIONS

A court may not rely solely on the existence of an implied consent statute to conclude that consent to a blood test was given for Fourth Amendment purposes, and the determination of whether consent was voluntarily given requires a court to consider the totality of the circumstances. *State v. Modlin*, 291 Neb. 660, 867 N.W.2d 609 (2015).

### **60-6,197.02.**

"Conviction" means a finding of guilt by a jury or a judge, or a judge's acceptance of a plea of guilty or no contest. *State v. Gilliam*, 292 Neb. 770, 874 N.W.2d 48 (2016).

For the purpose of sentence enhancement, a suspended imposition of a sentence from Missouri qualified as a "prior conviction" where the Missouri judgment indicated that the defendant pled guilty to driving while intoxicated in a Missouri court and the judge accepted the plea. *State v. Gilliam*, 292 Neb. 770, 874 N.W.2d 48 (2016).

### **60-6,198.**

In making a determination as to causation in a prosecution for driving under the influence and causing serious bodily injury, a court should focus on a defendant's act of driving while under the influence of alcohol or drugs and not on his or her intoxication. *State v. Irish*, 292 Neb. 513, 873 N.W.2d 161 (2016).

The elements of driving under the influence and causing serious bodily injury are: (1) The defendant was operating a motor vehicle, (2) the defendant was operating a motor vehicle in violation of section 60-6,196 or section 60-6,197, and (3) the defendant's act of driving under the influence proximately caused serious bodily injury to another person. *State v. Irish*, 292 Neb. 513, 873 N.W.2d 161 (2016).

### **60-6,199.**

Because there is no statutory or constitutional requirement that a defendant be advised of his or her rights under this section, there is no constitutional requirement that an advisement must be given in a language the defendant understands. *State v. Wang*, 291 Neb. 632, 867 N.W.2d 564 (2015).

### **67-434.**

In calculating a buyout distribution for dissociating partners, the hypothetical sale must be based on all of the partnership's assets and not just selected assets. *Robertson v. Jacobs Cattle Co.*, 292 Neb. 195, 874 N.W.2d 1 (2015).

### **67-445.**

In calculating a buyout distribution for dissociating partners, the hypothetical sale must be based on all of the partnership's assets and not just selected assets. *Robertson v. Jacobs Cattle Co.*, 292 Neb. 195, 874 N.W.2d 1 (2015).

### **70-301.**

The procedure to condemn shall be exercised in the manner set forth in sections 76-704 to 76-724. *Krupicka v. Village of Dorchester*, 19 Neb. App. 242, 804 N.W.2d 37 (2011).

### **71-1207.**

The 7-day time limit for holding a hearing under this section is directory, not mandatory. *D.I. v. Gibson*, 291 Neb. 554, 867 N.W.2d 284 (2015).

### **75-109.01.**

The Public Service Commission does not have jurisdiction pursuant to the Grain Warehouse Act and the Grain Dealer Act to determine equitable actions based on fraud and misrepresentation, such as rescission or an action for a constructive trust. *In re Claims Against Pierce Elevator*, 291 Neb. 798, 868 N.W.2d 781 (2015).

## ANNOTATIONS

### **75-903.**

Pursuant to the former subsection (4) of this section, the warehouse bond and the dealer bond cannot be combined, because the activity covered by each bond is unique and the requirements for bond protection under each bond are different. In re Claims Against Pierce Elevator, 291 Neb. 798, 868 N.W.2d 781 (2015).

### **75-906.**

The Public Service Commission has limited jurisdiction to determine the claims that exist under the Grain Dealer Act on the date of a warehouse closure. In re Claims Against Pierce Elevator, 291 Neb. 798, 868 N.W.2d 781 (2015).

### **76-2,120.**

Although this section indicates that the purchaser "may" recover attorney fees, attorney fees under this section are mandatory if the seller fails to comply with statutory requirements for a disclosure statement. Nelson v. Wardyn, 19 Neb. App. 864, 820 N.W.2d 82 (2012).

### **76-704.01.**

A condemnation petition must contain a statement of the authority for the acquisition. Krupicka v. Village of Dorchester, 19 Neb. App. 242, 804 N.W.2d 37 (2011).

Evidence of attempts to negotiate in good faith with the property owner must appear on the face of a condemnation petition. Krupicka v. Village of Dorchester, 19 Neb. App. 242, 804 N.W.2d 37 (2011).

### **76-826.**

Under this section, the validity of a lien for unpaid assessments is determined under section 76-874 if the events relevant to the lien occurred after January 1, 1984, even if the condominium was created before that date. Twin Towers Condo. Assn. v. Bel Fury Invest. Group, 290 Neb. 329, 860 N.W.2d 147 (2015).

### **76-870.**

In order to convey limited common elements, subsection (a) of this section requires the approval of 80 percent of the total authorized votes in the association and the approval of all of the unit owners to which the use of the limited common elements is allocated. McGill v. Lion Place Condo. Assn., 291 Neb. 70, 864 N.W.2d 642 (2015).

Subsection (a) of this section requires the approval of 80 percent of the total authorized votes in the association to convey common elements, whether or not the common elements are also limited common elements. McGill v. Lion Place Condo. Assn., 291 Neb. 70, 864 N.W.2d 642 (2015).

### **76-874.**

A condominium association can foreclose a lien for unpaid assessments under this section without first obtaining a personal judgment for the underlying debt. Twin Towers Condo. Assn. v. Bel Fury Invest. Group, 290 Neb. 329, 860 N.W.2d 147 (2015).

An award of costs and reasonable attorney fees for the prevailing party under this section is mandatory. Twin Towers Condo. Assn. v. Bel Fury Invest. Group, 290 Neb. 329, 860 N.W.2d 147 (2015).

### **76-1013.**

An action to recover the balance due upon the obligation for which the trust deed was given as security does not include enforcement of liens upon or security interests in other collateral given to secure the same obligation. Doty v. West Gate Bank, 292 Neb. 787, 874 N.W.2d 839 (2016).

The 3-month statute of limitations under the Trust Deeds Act does not bar a bank from foreclosing on the bank's remaining collateral. Doty v. West Gate Bank, 292 Neb. 787, 874 N.W.2d 839 (2016).

## ANNOTATIONS

### 76-1015.

The 10-year statute of limitations governing foreclosure of mortgages or deeds of trust as mortgages, rather than the 5-year statute of limitations governing trust deed foreclosure in which a trustee exercises power of sale upon default, applied to a claim brought by a holder of a promissory note secured by a deed of trust on property seeking foreclosure of the deed of trust, because the claim was not for trustee foreclosure. *Bel Fury Invest. Group v. Palisades Collection*, 19 Neb. App. 883, 814 N.W.2d 394 (2012).

### 77-105.

In determining whether an item is a fixture or a trade fixture under a contract for the sale and purchase of real estate, the description of trade fixtures contained within Nebraska's revenue and taxation statutes may have some utility as persuasive authority, but the more sound approach is to look to the common law and the test developed thereunder. *Griffith v. Drew's LLC*, 290 Neb. 508, 860 N.W.2d 749 (2015).

### 77-1502.

A property valuation protest that specified the assessed and requested valuation amounts but stated no reason for the requested change did not comply with the statutory requirement that the protest "contain or have attached a statement of the reason or reasons why the requested change should be made." *Village at North Platte v. Lincoln Cty. Bd. of Equal.*, 292 Neb. 533, 873 N.W.2d 201 (2016).

Where a protest of property valuation failed to contain or have attached the statement of the reason or reasons for the protest, the county board of equalization lacked authority to do anything other than dismiss the protest. *Village at North Platte v. Lincoln Cty. Bd. of Equal.*, 292 Neb. 533, 873 N.W.2d 201 (2016).

### 77-1507.

This section applies to real property only and does not authorize a county board of equalization to place personal property on the tax rolls in an attempt to correct an alleged clerical error. *Cargill Meat Solutions v. Colfax Cty. Bd. of Equal.*, 290 Neb. 726, 861 N.W.2d 718 (2015).

### 77-1507.01.

A hearing held under this section shall follow the procedural rules applicable to other proceedings before the Tax Equalization and Review Commission. Thus, two commissioners were sufficient to reach a quorum to conduct business, but when only one commissioner in a quorum of two determines that relief should be granted, there is no majority and the commission shall deny relief to the petitioner. *Cain v. Custer Cty. Bd. of Equal.*, 291 Neb. 730, 868 N.W.2d 334 (2015).

### 77-1824.

Once the holder of the tax sale certificate has filed a judicial foreclosure action, this section cannot be used to redeem the property. *Neun v. Ewing*, 290 Neb. 963, 863 N.W.2d 187 (2015).

### 77-1837.

A treasurer's tax deed, issued pursuant to this section and in compliance with sections 77-1801 to 77-1863, passes title free and clear of all previous liens and encumbrances. *Knosp v. Shafer Properties*, 19 Neb. App. 809, 820 N.W.2d 68 (2012).

### 77-1902.

This section requires an individual to act pursuant to section 77-1917 in order to redeem property during the pendency of a foreclosure action. *Neun v. Ewing*, 290 Neb. 963, 863 N.W.2d 187 (2015).

This section is not the only avenue by which title to property sold at a tax sale can be obtained free and clear of previous liens. *Knosp v. Shafer Properties*, 19 Neb. App. 809, 820 N.W.2d 68 (2012).

### 77-1917.

Section 77-1902 requires an individual to act pursuant to this section in order to redeem property during the pendency of a foreclosure action. *Neun v. Ewing*, 290 Neb. 963, 863 N.W.2d 187 (2015).

## ANNOTATIONS

### **77-5725.**

The exemption provisions in subdivision (8)(c) of this section impose a mandatory statutory deadline for the filing of the prescribed form. *Archer Daniels Midland Co. v. State*, 290 Neb. 780, 861 N.W.2d 733 (2015).

### **79-10,105.**

This section does not prohibit a school district from entering into a lease-purchase agreement to finance a capital construction project without voter approval if it has not created a nonprofit corporation to issue bonds for the school district. *Nebuda v. Dodge Cty. Sch. Dist. 0062*, 290 Neb. 740, 861 N.W.2d 742 (2015).

### **83-178.**

For purposes of subsection (2) of this section, "good cause" means a logical or legally sufficient reason in light of all the surrounding facts and circumstances and in view of the very narrow access intended by the Legislature. *Pettit v. Nebraska Dept. of Corr. Servs.*, 291 Neb. 513, 867 N.W.2d 553 (2015).

Whether a person seeking access to an inmate's institutional file shows good cause is a mixed question of law and fact. What the parties show presents questions of fact, which an appellate court reviews for clear error. Whether the showing establishes good cause is a question of law, and an appellate court reviews questions of law independently. Where the facts are undisputed, the entire question becomes one of law. *Pettit v. Nebraska Dept. of Corr. Servs.*, 291 Neb. 513, 867 N.W.2d 553 (2015).

### **83-1,110.**

Good time reductions do not apply to mandatory minimum sentences. *State v. Russell*, 291 Neb. 33, 863 N.W.2d 813 (2015).

Although no reduction for good time is accumulated for sentences imposing a mandatory minimum term of incarceration for the duration of that term, this section does not require that all sentences carrying a mandatory minimum term be served consecutively. *State v. Lantz*, 290 Neb. 757, 861 N.W.2d 728 (2015).

### **83-4,111.**

The language of this section does not establish a right in inmates to a determination of which rights they retain upon commitment. *Meis v. Houston*, 19 Neb. App. 504, 808 N.W.2d 897 (2012).

The Nebraska Department of Correctional Services' duty to promulgate rules and regulations regarding inmate rights under this section has been fulfilled by the promulgation of 68 Neb. Admin. Code, chs. 1 through 9 (2008). *Meis v. Houston*, 19 Neb. App. 504, 808 N.W.2d 897 (2012).

### **84-911.**

A prisoner is not entitled to a declaratory judgment under this section as to the validity of a regulation limiting the amount of property that can be possessed by an inmate, because a prisoner does not enjoy the unqualified right to possess property while in prison. *Meis v. Houston*, 19 Neb. App. 504, 808 N.W.2d 897 (2012).

### **84-917.**

An inmate's petition for the reclassification of custody level from medium custody to minimum custody did not involve a "contested case" and was thus not subject to judicial review under the Administrative Procedure Act. *Purdie v. Nebraska Dept. of Corr. Servs.*, 292 Neb. 524, 872 N.W.2d 895 (2016).

An assignment of error concerning a witness's testimony and evidence was not considered on appeal, because the complaining party did not raise or discuss the issue in its petition for review filed with the district court. *Nebraska Pub. Advocate v. Nebraska Pub. Serv. Comm.*, 19 Neb. App. 596, 815 N.W.2d 192 (2012).

### **84-1301.**

Although the actual appreciation or increase in value of a state employee's pension occurred during the marriage, such increase was not due to the efforts or contribution of marital funds by the parties during the

## ANNOTATIONS

marriage, but, rather, was guaranteed prior to the marriage by operation of subsection (17) of this section. Therefore, such increase was not marital property. *Coufal v. Coufal*, 291 Neb. 378, 866 N.W.2d 74 (2015).

### **88-526.**

Notice of an in-store transfer is considered prima facie evidence that an in-store transfer occurred, but it is not the only evidence that can establish the occurrence of an in-store transfer. In *re Claims Against Pierce Elevator*, 291 Neb. 798, 868 N.W.2d 781 (2015).

### **88-530.**

Issuance of a check does not occur when the sale of grain occurs or the date the check was written. Instead, issuance is the date that a check is first delivered by the maker or drawer. In *re Claims Against Pierce Elevator*, 291 Neb. 798, 868 N.W.2d 781 (2015).

The operative date for check holder claims is the date the check was issued. In *re Claims Against Pierce Elevator*, 291 Neb. 798, 868 N.W.2d 781 (2015).

The warehouse bond and the dealer bond cannot be combined, because the activity covered by each bond is unique and the requirements for bond protection under each bond are different. In *re Claims Against Pierce Elevator*, 291 Neb. 798, 868 N.W.2d 781 (2015).

### **88-547.**

When the Public Service Commission adjudicates claims under the Grain Warehouse Act, its objective is to determine those owners, depositors, storers, or qualified check holders at the time a warehouse is closed. In *re Claims Against Pierce Elevator*, 291 Neb. 798, 868 N.W.2d 781 (2015).

## NEBRASKA UNIFORM COMMERCIAL CODE

### **UCC 2-312.**

The seller breaches the warranty of title under this section by delivering a defective certificate of title to the buyer of a motor vehicle. *McCoolidge v. Oyvetsky*, 292 Neb. 955, 874 N.W.2d 892 (2016).

The seller breaches the warranty of title under this section if there is a substantial cloud or shadow over the title, even if no third party has come forward with a superior claim. *McCoolidge v. Oyvetsky*, 292 Neb. 955, 874 N.W.2d 892 (2016).

### **UCC 2-714.**

If the buyer accepts defective goods, damages are measured under this section. *McCoolidge v. Oyvetsky*, 292 Neb. 955, 874 N.W.2d 892 (2016).

The existence of "special circumstances" under this section is not a precondition to a buyer's recovery of incidental and consequential damages under section 2-715. *McCoolidge v. Oyvetsky*, 292 Neb. 955, 874 N.W.2d 892 (2016).

### **UCC 2-715.**

Consequential damages under this section include the buyer's loss of use of the goods. *McCoolidge v. Oyvetsky*, 292 Neb. 955, 874 N.W.2d 892 (2016).

Incidental damages under this section include the cost of storing defective goods. *McCoolidge v. Oyvetsky*, 292 Neb. 955, 874 N.W.2d 892 (2016).

The existence of "special circumstances" under section 2-714 is not a precondition to a buyer's recovery of incidental and consequential damages under this section. *McCoolidge v. Oyvetsky*, 292 Neb. 955, 874 N.W.2d 892 (2016).

## ANNOTATIONS

### **UCC 3-420.**

When this section applies, a litigant cannot rely on common-law causes of action. *Zornes v. Zornes*, 292 Neb. 271, 872 N.W.2d 571 (2015).

## CHAPTER 1

### ACCOUNTANTS

#### Section

1-136.02. Permit; when issued.

#### **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 accounting experience satisfactory to the board, in any state or foreign country, in employment as an accountant in a firm, proprietorship, partnership, corporation, limited liability company, or other business entity authorized in any state to engage in the practice of public accountancy under the supervision of an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state;

(b) Except as provided in subdivision (c) of this subsection, three years of accounting experience satisfactory to the board, in any state or foreign country, in employment as (i) an accountant in government or business under the supervision of an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state or (ii) faculty at a college or university of recognized standing under the supervision of an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state; or

(c) Two years of accounting experience satisfactory to the board in employment as an accountant in the office of the Auditor of Public Accounts or the Department of Revenue under the supervision of an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state.

(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, meets the experience requirement in subdivision (1)(a), (b), or (c) of this section.

**Source:** Laws 1977, LB 290, § 3; Laws 1993, LB 41, § 2; Laws 1997, LB 114, § 29; Laws 2007, LB24, § 2; Laws 2009, LB31, § 19; Laws 2013, LB27, § 1; Laws 2016, LB853, § 5; Laws 2017, LB56, § 1. Effective date August 24, 2017.





**CHAPTER 2  
AGRICULTURE**

Article.

- 3. Community Gardens Act. 2-301, 2-305.
- 10. Plant Diseases, Insect Pests, and Animal Pests.
  - (j) Grasshoppers and Other Pests. 2-1066 to 2-1071. Repealed.
  - (k) Plant Protection and Plant Pest Act. 2-1073 to 2-10,116.
- 12. Horseracing. 2-1222.
- 32. Natural Resources. 2-3228.
- 35. Graded Eggs. 2-3501 to 2-3526.
- 38. Marketing, Development, and Promotion of Agricultural Products.
  - (c) Agricultural Products Promotion and Development. 2-3815.
- 39. Milk.
  - (e) Dairy Study. 2-3993. Repealed.
- 53. Carbon Sequestration. Repealed.

**ARTICLE 3  
COMMUNITY GARDENS ACT**

Section

- 2-301. Act, how cited.
- 2-305. Repealed. Laws 2017, LB644, § 21.

**2-301 Act, how cited.**

Sections 2-301 to 2-304 shall be known and may be cited as the Community Gardens Act.

**Source:** Laws 2015, LB175, § 11; Laws 2017, LB644, § 1.  
Effective date August 24, 2017.

**2-305 Repealed. Laws 2017, LB644, § 21.**

**ARTICLE 10  
PLANT DISEASES, INSECT PESTS, AND ANIMAL PESTS**

(j) GRASSHOPPERS AND OTHER PESTS

Section

- 2-1066. Repealed. Laws 2017, LB274, § 6.
- 2-1067. Repealed. Laws 2017, LB274, § 6.
- 2-1068. Repealed. Laws 2017, LB274, § 6.
- 2-1069. Repealed. Laws 2017, LB274, § 6.
- 2-1070. Repealed. Laws 2017, LB274, § 6.
- 2-1071. Repealed. Laws 2017, LB274, § 6.

(k) PLANT PROTECTION AND PLANT PEST ACT

- 2-1073. Public policy declaration.
- 2-1091. Implementation or enforcement of act; department; powers.
- 2-10,110. Implementation or enforcement agreements authorized.
- 2-10,116. Rules and regulations.

## (j) GRASSHOPPERS AND OTHER PESTS

**2-1066 Repealed. Laws 2017, LB274, § 6.**

**2-1067 Repealed. Laws 2017, LB274, § 6.**

**2-1068 Repealed. Laws 2017, LB274, § 6.**

**2-1069 Repealed. Laws 2017, LB274, § 6.**

**2-1070 Repealed. Laws 2017, LB274, § 6.**

**2-1071 Repealed. Laws 2017, LB274, § 6.**

## (k) PLANT PROTECTION AND PLANT PEST ACT

**2-1073 Public policy declaration.**

It is hereby declared to be the public policy of the State of Nebraska and the purpose of the Plant Protection and Plant Pest Act to protect and foster the health, prosperity, and general welfare of Nebraska residents by preserving and protecting the plant industry and the agricultural interests of the state. Because of the importance of the plant industry and agricultural interests to the welfare and economy of the state and the damage which can result from the uncontrolled proliferation of plant pests, there is a need to impose standards and restrictions on the movement and care of plants and the movement, treatment, control, and eradication of plant pests within the state. The Department of Agriculture shall be charged with administering and enforcing such standards and restrictions through the act.

**Source:** Laws 1988, LB 874, § 2; Laws 2017, LB274, § 1.  
Effective date August 24, 2017.

**2-1091 Implementation or enforcement of act; department; powers.**

For the purpose of implementation or enforcement of the Plant Protection and Plant Pest Act or any rule or regulation, the department may:

(1) Enter at reasonable times and in a reasonable manner without being subject to any action for trespass or damages, if reasonable care is exercised, all property where plants are grown, packed, held prior to distribution, or distributed for the purpose of inspecting all plants, structures, vehicles, equipment, packing materials, containers, records, and labels on such property or otherwise implementing or enforcing the act. The department may inspect and examine all records and property relating to compliance with the act. Such records and property shall be made available to the department for review at all reasonable times;

(2) In a reasonable manner, hold for inspection and take samples of any plants and associated materials which may not be in compliance with the act;

(3) Inspect or reinspect at any time or place any plants that are in the state or being shipped into or through the state and treat, seize, destroy, require treatment or destruction of, or return to the state of origin any plants in order to inhibit or prevent the movement of plant pests throughout the state;

(4) Obtain an inspection warrant in the manner prescribed in sections 29-830 to 29-835 from a court of record if any person refuses to allow the department to inspect pursuant to this section;

(5) Issue a written or printed withdrawal-from-distribution order and post signs to delineate sections not marked pursuant to subsection (3) of section 2-1095 or sections of distribution locations and to notify persons of any withdrawal-from-distribution order when the department has reasonable cause to believe any lot of nursery stock is being distributed in violation of the act or any rule or regulation;

(6) Apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond;

(7) Issue a quarantine or establish a quarantine area;

(8) Cooperate and enter into agreements, including harmonization plans, with any person in order to carry out the purpose of the act;

(9) Establish a restricted plant pest list to prohibit the movement into the state of plant pests not known to occur in Nebraska and to prohibit the movement of those plant pests present in the state but known to be destructive to the plant industry;

(10) Issue European corn borer quarantine certificates, phytosanitary certificates, and export certificates on plants for individual shipment to other states or foreign countries if those plants comply with the requirements or regulations of such state or foreign country or issue quarantine compliance agreements or European corn borer quarantine certification licenses;

(11) Inspect plants that any person desires to ship into another state or country when such person has made an application to the department for such inspection. The inspection shall determine the presence of plant pests to determine the acceptance of the plants into other states or countries. The department may accept the inspections of laboratories authorized by the department or field inspectors of the department;

(12) Certify plants or property to meet the requirements of specific quarantines imposed on Nebraska or Nebraska plants. The quarantine certification requirements shall be set forth in the rules and regulations;

(13) Until increased or decreased by rules or regulations, assess and collect fees set forth in section 2-1091.02 for inspections, services, or work performed in carrying out subdivisions (8) and (10) through (12) of this section. Inspection time shall include the driving to and from the location of the inspection in addition to the time spent conducting the inspection, and the mileage charge shall be for the purpose of inspection. Any fee charged to the department relating to such subdivisions shall be paid by the person requesting the inspection, services, or work. The department may, for purposes of administering such subdivisions, establish in rules and regulations inspection requirements, standards, and issuance, renewal, or revocation of licenses, certificates, or agreements necessitated by such subdivisions;

(14) Conduct continuing survey and detection programs on plant pests to monitor the population or spread of plant pests;

(15) Implement programs or plans to eradicate, manage, treat, or control plant pests;

(16) Issue, place on probation, suspend, or revoke licenses issued or agreements entered into pursuant to the act or deny applications for such licenses or agreements pursuant to the act; and

(17) Issue orders imposing administrative fines or cease and desist orders pursuant to the act.

**Source:** Laws 1988, LB 874, § 20; Laws 1993, LB 406, § 11; Laws 2013, LB68, § 8; Laws 2017, LB274, § 2.  
Effective date August 24, 2017.

### **2-10,110 Implementation or enforcement agreements authorized.**

The department may receive grants-in-aid or receive and disperse pass-through funds or otherwise cooperate and enter into agreements with the United States Department of Agriculture or any other person in the department's implementation or enforcement of the Plant Protection and Plant Pest Act or federal programs related to plant protection or plant pests in the state.

**Source:** Laws 1988, LB 874, § 39; Laws 2017, LB274, § 3.  
Effective date August 24, 2017.

### **2-10,116 Rules and regulations.**

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

- (1) The issuance and revocation of licenses as authorized by the Plant Protection and Plant Pest Act;
- (2) The assessment and collection of license, inspection, reinspection, and delinquent fees;
- (3) The withdrawal from distribution of nursery stock;
- (4) The care, viability, and standards for nursery stock;
- (5) The labeling and shipment of nursery stock;
- (6) The issuance and release of plant pest quarantines and withdrawal-from-distribution orders;
- (7) The establishment of a restricted plant pest list;
- (8) The preparation, maintenance, handling, and filing of reports by persons subject to the act;
- (9) The adoption of the American Association of Nurserymen's American Standard for Nursery Stock insofar as it does not conflict with any provision of the act;
- (10) Factors to be considered when the director issues an order imposing an administrative fine;
- (11) The planting of certified seed potatoes in the state; and
- (12) The implementation of programs or plans involving the movement, treatment, control, and eradication of plant pests in the state.

**Source:** Laws 1988, LB 874, § 45; Laws 1993, LB 406, § 31; Laws 2008, LB791, § 4; Laws 2017, LB274, § 4.  
Effective date August 24, 2017.

**ARTICLE 12**  
**HORSERACING**

## Section

2-1222. Racing Commission's Cash Fund; created; receipts; use; investment.

**2-1222 Racing Commission's Cash Fund; created; receipts; use; investment.**

There is hereby created the Racing Commission's Cash Fund from which shall be appropriated such amounts as are available therefrom and as shall be considered incident to the administration of the State Racing Commission's office. The fund shall contain all license fees and gross receipt taxes collected by the commission as provided under sections 2-1203, 2-1203.01, and 2-1208 but shall not include taxes collected pursuant to section 2-1208.01, and such fees and taxes collected shall be remitted to the State Treasurer for credit to the Racing Commission's Cash Fund. Money in the fund may be transferred to the General Fund at the direction of the Legislature. The State Treasurer shall transfer one hundred fifty thousand dollars from the fund to the General Fund on or before June 15, 2018, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services. Any money in the Racing Commission's Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1980, LB 939, § 6; Laws 1992, LB 718, § 7; Laws 1994, LB 1066, § 4; Laws 2014, LB656, § 7; Laws 2017, LB331, § 16.  
Effective date May 16, 2017.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**ARTICLE 32**  
**NATURAL RESOURCES**

## Section

2-3228. Districts; powers; Nebraska Association of Resources Districts; retirement plan reports; duties.

**2-3228 Districts; powers; Nebraska Association of Resources Districts; retirement plan reports; duties.**

(1) Each district shall have the power and authority to:

(a) Receive and accept donations, gifts, grants, bequests, appropriations, or other contributions in money, services, materials, or otherwise from the United States or any of its agencies, from the state or any of its agencies or political subdivisions, or from any person as defined in section 49-801 and use or expend all such contributions in carrying on its operations;

(b) Establish advisory groups by appointing persons within the district, pay necessary and proper expenses of such groups as the board shall determine, and dissolve such groups;

(c) Employ such persons as are necessary to carry out its authorized purposes and, in addition to other compensation provided, establish and fund a pension plan designed and intended for the benefit of all permanent full-time employees

of the district. Any recognized method of funding a pension plan may be employed. Employee contributions shall be required to fund at least fifty percent of the benefits, and past service benefits may be included. The district shall pay all costs of any such past service benefits, which may be retroactive to July 1, 1972, and the plan may be integrated with old age and survivors' insurance, generally known as social security. A uniform pension plan, including the method for jointly funding such plan, shall be established for all districts in the state. A district may elect not to participate in such a plan but shall not establish an independent plan;

(d) Purchase liability, property damage, workers' compensation, and other types of insurance as in the judgment of the board are necessary to protect the assets of the district;

(e) Borrow money to carry out its authorized purposes;

(f) Adopt and promulgate rules and regulations to carry out its authorized purposes; and

(g) Invite the local governing body of any municipality or county to designate a representative to advise and counsel with the board on programs and policies that may affect the property, water supply, or other interests of such municipality or county.

(2) Beginning December 31, 1998, through December 31, 2017:

(a) The Nebraska Association of Resources Districts as organized under the Interlocal Cooperation Act shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

(i) The number of persons participating in the retirement plan;

(ii) The contribution rates of participants in the plan;

(iii) Plan assets and liabilities;

(iv) The names and positions of persons administering the plan;

(v) The names and positions of persons investing plan assets;

(vi) The form and nature of investments;

(vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the association may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits; and

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the association shall cause to be prepared an annual report and shall

file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the association does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the association. All costs of the audit shall be paid by the association. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

**Source:** Laws 1969, c. 9, § 28, p. 118; Laws 1975, LB 404, § 5; Laws 1983, LB 36, § 4; Laws 1985, LB 387, § 1; Laws 1991, LB 15, § 2; Laws 1994, LB 480, § 10; Laws 1998, LB 1191, § 2; Laws 1999, LB 436, § 5; Laws 1999, LB 795, § 1; Laws 2000, LB 891, § 1; Laws 2011, LB474, § 1; Laws 2014, LB759, § 2; Laws 2017, LB415, § 1.

Effective date May 24, 2017.

#### Cross References

Interlocal Cooperation Act, see section 13-801.

## ARTICLE 35 GRADED EGGS

### Section

- 2-3501. Repealed. Laws 2017, LB134, § 15.
- 2-3502. Repealed. Laws 2017, LB134, § 15.
- 2-3503. Repealed. Laws 2017, LB134, § 15.
- 2-3504. Repealed. Laws 2017, LB134, § 15.
- 2-3505. Repealed. Laws 2017, LB134, § 15.
- 2-3506. Repealed. Laws 2017, LB134, § 15.
- 2-3507. Repealed. Laws 2017, LB134, § 15.
- 2-3508. Repealed. Laws 2017, LB134, § 15.
- 2-3509. Repealed. Laws 2017, LB134, § 15.
- 2-3510. Repealed. Laws 2017, LB134, § 15.
- 2-3511. Repealed. Laws 2017, LB134, § 15.
- 2-3512. Repealed. Laws 2017, LB134, § 15.
- 2-3513. Repealed. Laws 2017, LB134, § 15.
- 2-3514. Repealed. Laws 2017, LB134, § 15.
- 2-3515. Repealed. Laws 2017, LB134, § 15.
- 2-3516. Repealed. Laws 2017, LB134, § 15.
- 2-3518. Repealed. Laws 2017, LB134, § 15.
- 2-3519. Repealed. Laws 2017, LB134, § 15.
- 2-3520. Repealed. Laws 2017, LB134, § 15.
- 2-3521. Repealed. Laws 2017, LB134, § 15.
- 2-3522. Repealed. Laws 2017, LB134, § 15.
- 2-3523. Repealed. Laws 2017, LB134, § 15.
- 2-3524. Repealed. Laws 2017, LB134, § 15.
- 2-3525. Repealed. Laws 2017, LB134, § 15.
- 2-3526. Graded Egg Fund; transfer.

**2-3501 Repealed. Laws 2017, LB134, § 15.**

**2-3502 Repealed. Laws 2017, LB134, § 15.**

**2-3503 Repealed. Laws 2017, LB134, § 15.**

**2-3504 Repealed. Laws 2017, LB134, § 15.**

**2-3505 Repealed. Laws 2017, LB134, § 15.**

**2-3506 Repealed. Laws 2017, LB134, § 15.**

**2-3507 Repealed. Laws 2017, LB134, § 15.**

**2-3508 Repealed. Laws 2017, LB134, § 15.**

**2-3509 Repealed. Laws 2017, LB134, § 15.**

**2-3510 Repealed. Laws 2017, LB134, § 15.**

**2-3511 Repealed. Laws 2017, LB134, § 15.**

**2-3512 Repealed. Laws 2017, LB134, § 15.**

**2-3513 Repealed. Laws 2017, LB134, § 15.**

**2-3514 Repealed. Laws 2017, LB134, § 15.**

**2-3515 Repealed. Laws 2017, LB134, § 15.**

**2-3516 Repealed. Laws 2017, LB134, § 15.**

**2-3518 Repealed. Laws 2017, LB134, § 15.**

**2-3519 Repealed. Laws 2017, LB134, § 15.**

**2-3520 Repealed. Laws 2017, LB134, § 15.**

**2-3521 Repealed. Laws 2017, LB134, § 15.**

**2-3522 Repealed. Laws 2017, LB134, § 15.**

**2-3523 Repealed. Laws 2017, LB134, § 15.**

**2-3524 Repealed. Laws 2017, LB134, § 15.**

**2-3525 Repealed. Laws 2017, LB134, § 15.**

**2-3526 Graded Egg Fund; transfer.**

The State Treasurer shall transfer any money in the Graded Egg Fund to the Pure Food Cash Fund on August 24, 2017.

**Source:** Laws 2017, LB134, § 13.

Effective date August 24, 2017.



## ARTICLE 38

MARKETING, DEVELOPMENT, AND PROMOTION  
OF AGRICULTURAL PRODUCTS

## (c) AGRICULTURAL PRODUCTS PROMOTION AND DEVELOPMENT

## Section

2-3815. Agriculture promotion and development program; established; purposes; employment of specialists.

## (c) AGRICULTURAL PRODUCTS PROMOTION AND DEVELOPMENT

**2-3815 Agriculture promotion and development program; established; purposes; employment of specialists.**

(1) The Department of Agriculture shall establish an agriculture promotion and development program. The department shall employ a program director and one specialist in research techniques and market development. Both individuals shall report directly to the Director of Agriculture.

(2) The program shall concentrate on the identification and development of opportunities to enhance profitability in agriculture and to stimulate agriculture-related economic development. Program activities may include, but not be limited to, (a) promotion and market development, (b) value-added processing of alternative and traditional commodities, (c) agricultural diversification, including poultry development and aquaculture, (d) agricultural cooperatives, and (e) alternative crops.

(3) The Department of Agriculture shall serve as the facilitator, coordinator, and catalyst for developments through and with the Nebraska Food Processing Center, the Cooperative Extension Service of the University of Nebraska, the commodity boards, the Department of Economic Development, other state agencies, the United States Department of Agriculture grant programs, and the private sector. It is the intent of the Legislature that the department foster close working relationships between production agriculture and existing programs for the purposes of agricultural development and promotion. The department may enter into such contracts as may be necessary to carry out the purposes of this section.

(4) For purposes of this section, unless the context otherwise requires, private sector includes, but is not limited to, representatives of food industry associations, lenders, or venture capital groups.

**Source:** Laws 1987, LB 561, § 1; R.S.1943, (1987), § 2-2516; Laws 2011, LB334, § 1; Laws 2017, LB644, § 2.  
Effective date August 24, 2017.

## ARTICLE 39

## MILK

## (e) DAIRY STUDY

## Section

2-3993. Repealed. Laws 2017, LB2, § 3.

## (e) DAIRY STUDY

**2-3993 Repealed. Laws 2017, LB2, § 3.**

**ARTICLE 53**

**CARBON SEQUESTRATION**

Section

- 2-5301. Repealed. Laws 2017, LB644, § 21.
- 2-5302. Repealed. Laws 2017, LB644, § 21.
- 2-5303. Repealed. Laws 2017, LB644, § 21.
- 2-5305. Repealed. Laws 2017, LB644, § 21.
- 2-5306. Repealed. Laws 2017, LB644, § 21.

**2-5301 Repealed. Laws 2017, LB644, § 21.**

**2-5302 Repealed. Laws 2017, LB644, § 21.**

**2-5303 Repealed. Laws 2017, LB644, § 21.**

**2-5305 Repealed. Laws 2017, LB644, § 21.**

**2-5306 Repealed. Laws 2017, LB644, § 21.**

## AERONAUTICS

# CHAPTER 3 AERONAUTICS

### Article.

1. General Provisions. 3-101 to 3-164.
2. Airports and Landing Fields. 3-201 to 3-239.
3. Airport Zoning. 3-303, 3-332.
4. Regulation of Structures. 3-403 to 3-409.

## ARTICLE 1

### GENERAL PROVISIONS

#### Section

- 3-101. Terms, defined.
- 3-102. Purpose of act.
- 3-103. Division of Aeronautics; director; appointment; qualifications; duties; oath.
- 3-104. Nebraska Aeronautics Commission; created; members, appointment; term; qualification; chairperson; quorum; meetings; compensation; duties.
- 3-105. Division; seal; rules and regulations; adopt.
- 3-106. Division; aircraft; purchase; use; report; contents.
- 3-107. Division; general supervision; state funds; expenditure; recovery.
- 3-108. Division; cooperate with federal government, political subdivisions, and others engaged in aeronautics; hearings; reports; contents.
- 3-109. Division; powers; rules and regulations; applicability to federal government.
- 3-110. Rules and regulations; conform to federal regulation.
- 3-111. Rules and regulations; where kept.
- 3-113. Division; engineering and technical services; availability.
- 3-114. Division; represent state in aeronautical matters.
- 3-115. Actions by or against division; intervention.
- 3-116. Enforcement; intergovernmental cooperation.
- 3-117. Director; investigations; hearings; oaths; certify official acts; subpoenas; compel attendance of witnesses; violation; penalty.
- 3-118. Division; reports of investigations or hearings; evidence; how used.
- 3-119. Division; assist in acquisition, development, operation, or maintenance of airports.
- 3-120. Division; contracts; authorized.
- 3-121. Division; airway and airport; exclusive right prohibited.
- 3-123. Division; cooperate with federal government; comply with federal laws.
- 3-124. Division; acceptance of gifts of money, authorized; terms and conditions.
- 3-125. Division; contracts; laws governing.
- 3-126. Aeronautics Cash Fund; created; use; investment.
- 3-127. Director; duties.
- 3-128. Division; regulation of airports.
- 3-131. License, certificate, permit, or registration; duty to carry, present for inspection, and exhibit.
- 3-133. Airports; license; requirement; approval of site; operation without license unlawful.
- 3-134. Air navigation facility; certificate of approval; hearing; notice; order; license.
- 3-135. Air navigation facility; certificate of approval; hearing; standards to be considered.
- 3-137. Air navigation facility; certificate of approval; revocation, grounds.
- 3-139. Division; certificate of approval, permit, or license; refuse to issue; notice; set forth reasons; inspection of premises.
- 3-140. Appeal; procedure.

## Section

- 3-141. Division; air navigation facilities; acquire by purchase, gift, or condemnation; establish; improve; operate; dispose of property; exception.
- 3-142. Division; airports; easements; acquire by condemnation.
- 3-143. Division; joint activities; authorized.
- 3-144. Division; right of eminent domain; procedure.
- 3-145. Division; airport; lease; sell; supplies.
- 3-146. Division; rentals; power to determine; charges; lien; enforce.
- 3-147. Airports; acquisition of land; purpose.
- 3-148. Aircraft fuel tax; Aircraft Fuel Tax Fund; created; distribution; terms, defined.
- 3-149. Aircraft fuel tax; collection; violation; penalty.
- 3-152. Violations; penalty.
- 3-154. Act, how cited.
- 3-155. Real property formerly used as army airfields; disposal; conditions.
- 3-156. Aeronautics Trust Fund; created; real property; proceeds of sale; how used; investment.
- 3-157. Division; real property; lease; when; requirements.
- 3-158. Person renting aircraft; insurance information; notice.
- 3-159. Authorization to purchase new aircraft; sale of aircraft.
- 3-160. Employees of Department of Aeronautics; transfer to Division of Aeronautics; how treated.
- 3-161. Reference to Department of Aeronautics in contracts or other documents; how construed; contracts and property; how treated.
- 3-162. Actions and proceedings; how treated.
- 3-163. Provisions of law; how construed.
- 3-164. Property of Department of Aeronautics; transfer to Division of Aeronautics; appropriation and salary limit; how treated.

**3-101 Terms, defined.**

For purposes of the State Aeronautics Act and the laws of this state relating to aeronautics, the following words, terms, and phrases shall have the meanings given in this section, unless otherwise specifically defined or unless another intention clearly appears or the context otherwise requires:

(1) Aeronautics means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants, and accessories, including the repair, packing, and maintenance of parachutes; and the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities, and air instruction;

(2) Aircraft means any contrivance now known, hereafter invented, used, or designed for navigation of or flight in the air;

(3) Airport means (a) any area of land or water, except a restricted landing area, which is designed for the landing and takeoff of aircraft, whether or not facilities are provided for the sheltering, servicing, or repairing of aircraft or for receiving or discharging passengers or cargo, (b) all appurtenant areas used or suitable for airport buildings or other airport facilities, and (c) all appurtenant rights-of-way, whether heretofore or hereafter established;

(4) Air navigation facility means any facility, other than one owned or controlled by the federal government, used in, available for use in, or designed for use in aid of air navigation, including airports, restricted landing areas, and any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid or constituting an advantage or convenience to the safe takeoff, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area and any combination of any or all of such facilities;

(5) Air navigation means the operation or navigation of aircraft in the air space over this state or upon any airport or restricted landing area within this state;

(6) Airman means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way and (excepting individuals employed outside the United States, any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, and any individual performing inspection or mechanical duties in connection with aircraft owned or operated by him or her) any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances and any individual who serves in the capacity of aircraft dispatcher or air traffic control-tower operator;

(7) Air instruction means the imparting of aeronautical information by any aeronautics instructor or in or by any air school or flying club;

(8) Aeronautics instructor means any individual engaged in giving instruction, or offering to give instruction, in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising such occupation, without calling his or her facilities an air school or anything equivalent thereto, and without employing or using other instructors. It does not include any instructor in any public school or university of this state or any institution of higher learning duly accredited and approved for carrying on collegiate work while engaged in his or her duties as such instructor;

(9) Airport protection privileges means easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to insure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation thereof;

(10) Airport hazard means any structure, object of natural growth, or use of land which obstructs the air space required for the flight of aircraft in landing or taking off at any airport or restricted landing area or is otherwise hazardous to such landing or taking off;

(11) Civil aircraft means any aircraft other than a public aircraft;

(12) Commission means the Nebraska Aeronautics Commission;

(13) Director means the Director of Aeronautics;

(14) Division means the Division of Aeronautics of the Department of Transportation;

(15) Flying club means any person, other than an individual, who, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure or both;

(16) Location means the general vicinity to be served by a specific airport;

(17) Municipality means any county, city, village, or town of this state and any other political subdivision, public corporation, authority, or district in this state which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities;

(18) Navigable air space means air space above the minimum altitudes of flight prescribed by the laws of this state or by the rules and regulations adopted and promulgated by the division consistent therewith;

(19) Operation of aircraft or operate aircraft means the use of aircraft for the purpose of air navigation and includes the navigation or piloting of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control, in the capacity of owner, lessee, or otherwise, of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of the statutes of this state;

(20) Privately owned public use airport means any airport owned by a person which is primarily engaged in the business of providing necessary services and facilities for the operation of civil aircraft and which (a) has at least one paved runway, (b) is engaged in the retail sale of aviation gasoline or aviation jet fuel, and (c) possesses facilities for the sheltering, servicing, or repair of aircraft;

(21) Public aircraft means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any state, territory, or possession of the United States or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes;

(22) Restricted landing area means any area of land, water, or both, which is used or is made available for the landing and takeoff of aircraft, the use of which shall, except in case of emergency, be only as provided from time to time by the commission;

(23) Site means the specific land area to be used as an airport; and

(24) State airway means a route in the navigable air space over and above the lands or waters of this state, designated by the division as a route suitable for air navigation.

**Source:** Laws 1945, c. 5, § 1, p. 75; Laws 1976, LB 460, § 1; Laws 1993, LB 121, § 82; Laws 1995, LB 609, § 1; Laws 2017, LB339, § 1.  
Operative date July 1, 2017.

### **3-102 Purpose of act.**

The purpose of the State Aeronautics Act is to further the public interest and aeronautical progress by (1) providing for the protection and promotion of safety in aeronautics, (2) cooperating in effecting a uniformity of the laws relating to the development and regulation of aeronautics in the several states, (3) revising existing statutes relative to the development and regulation of aeronautics so as to grant such powers to and impose such duties upon the division in order that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction, may assist in the promotion of a statewide system of airports, may cooperate with and assist the political subdivisions of this state and others engaged in aeronautics, and may encourage and develop aeronautics, (4) establishing uniform regulations, consistent with federal regulations and those of other states, in order that those engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and the rights of others, and (5) providing for cooperation with the federal authorities in the development of a national system of civil aviation and for coordination of the aeronautical activities of those authorities and the

authorities of this state by assisting in accomplishing the purposes of federal legislation and eliminating costly and unnecessary duplication of functions properly in the province of federal agencies.

**Source:** Laws 1945, c. 5, § 2, p. 79; Laws 2017, LB339, § 2.

Operative date July 1, 2017.

**3-103 Division of Aeronautics; director; appointment; qualifications; duties; oath.**

(1) The Division of Aeronautics shall be a division of the Department of Transportation.

(2)(a) Until December 31, 2017, the chief administrative officer of the division shall be the director, to be known as the Director of Aeronautics, and shall be appointed by the Governor, subject to confirmation by the Legislature, with due regard to his or her fitness through aeronautical education and by knowledge of and recent practical experience in aeronautics. The director shall devote full time to the performance of his or her official duties and shall not have any pecuniary interest in, stock in, or bonds of any civil aeronautics enterprise. The director shall, before assuming the duties of the office, take and subscribe an oath, such as is required by state officers. The director shall be bonded or insured as required by section 11-201. The director shall receive such compensation as the Governor, with the approval of the commission, shall determine, subject to the provisions of the legislative appropriations bill.

(b) Beginning January 1, 2018, the chief administrative officer of the division shall be the Director of Aeronautics who shall be appointed by and report directly to the Director-State Engineer, subject to confirmation by the Legislature, with due regard to his or her fitness through aeronautical education and by knowledge of and recent practical experience in aeronautics. The director shall devote full time to the performance of his or her official duties and shall not have any pecuniary interest in, stock in, or bonds of any civil aeronautics enterprise. The director shall, before assuming the duties of the office, take and subscribe an oath, such as is required by state officers.

**Source:** Laws 1945, c. 5, § 3(1), p. 80; Laws 1947, c. 16, § 1, p. 95; Laws 1978, LB 653, § 3; Laws 2004, LB 884, § 2; Laws 2017, LB339, § 3.

Operative date July 1, 2017.

**3-104 Nebraska Aeronautics Commission; created; members, appointment; term; qualification; chairperson; quorum; meetings; compensation; duties.**

(1) There is hereby created the Nebraska Aeronautics Commission which shall consist of five members, who shall be appointed by the Governor. The terms of office of the members of the commission initially appointed shall expire on March 1 of the years 1946, 1947, 1948, 1949, and 1950, as designated by the Governor in making the respective appointments. As the terms of members expire, the Governor shall, on or before March 1 of each year, appoint a member of the commission for a term of five years to succeed the member whose term expires. Each member shall serve until the appointment and qualification of his or her successor. In case of a vacancy occurring prior to the expiration of the term of a member, the appointment shall be made only for the remainder of the term. All members of the commission shall be citizens and bona fide residents of the state and, in making such an appointment, the

Governor shall take into consideration the interest or training of the appointee in some one or all branches of aviation. The commission shall, in December of each year, select a chairperson for the ensuing year. The Director of Aeronautics shall serve as secretary as set forth in section 3-127. Three members shall constitute a quorum, and no action shall be taken by less than a majority of the commission.

(2) The commission shall meet upon the written call of the chairperson, the director, or any two members of the commission. Regular meetings shall be held at the office of the division but, whenever the convenience of the public or of the parties may be promoted or delay or expense may be prevented, the commission may hold meetings or proceedings at any other place designated by it. All meetings of the commission shall be open to the public. No member shall receive any salary for his or her service, but each shall be reimbursed for actual and necessary expenses incurred by him or her in the performance of his or her duties as provided in sections 81-1174 to 81-1177.

(3)(a) Until December 31, 2017, it shall be the duty of the commission to advise the Governor relative to the appointment of the Director of Aeronautics, and the commission shall report to the Governor whenever it feels that the Director of Aeronautics is not properly fulfilling his or her duties.

(b) Beginning January 1, 2018, the commission shall advise the Director-State Engineer relative to the appointment of the Director of Aeronautics, and the commission shall report to the Director-State Engineer whenever the commission feels that the Director of Aeronautics is not properly fulfilling his or her duties. The commission shall also advise the Governor on the general status and state of aviation in Nebraska.

(c) The commission shall further act in an advisory capacity to the Director of Aeronautics and Director-State Engineer.

(4) The commission shall have, in addition, the following specific duties: (a) To allocate state funds and approve the use of federal funds to be spent for the construction or maintenance of airports; (b) to designate the locations and approve sites of airports; (c) to arrange and authorize the purchase of aircraft upon behalf of the state; (d) to select and approve pilots to be employed by the state, if any; and (e) to assist the Director of Aeronautics in formulating the regulations and policies to be carried out by the division under the terms of the State Aeronautics Act. The commission may allocate state funds for the promotion of aviation as defined for the purpose of this section by the division by rule and regulation. The director may designate one or more members of the commission to represent the division in conferences with officials of the federal government, of other states, of other agencies or municipalities of this state, or of persons owning privately owned public use airports.

**Source:** Laws 1945, c. 5, § 3(2), p. 80; Laws 1976, LB 460, § 2; Laws 1981, LB 204, § 12; Laws 1995, LB 609, § 2; Laws 2004, LB 824, § 1; Laws 2017, LB339, § 4.

Operative date July 1, 2017.

**3-105 Division; seal; rules and regulations; adopt.**

The division shall adopt a seal and adopt and promulgate rules and regulations for its administration. All rules, regulations, and orders of the Department of Aeronautics adopted prior to July 1, 2017, in connection with the powers, duties, and functions transferred to the Division of Aeronautics of the Depart-



ment of Transportation pursuant to Laws 2017, LB339, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

**Source:** Laws 1945, c. 5, § 4, p. 82; Laws 1955, c. 231, § 6, p. 719; Laws 1976, LB 460, § 3; Laws 1981, LB 545, § 3; Laws 2017, LB339, § 5.

Operative date July 1, 2017.

**Cross References**

For promulgation of administrative rules, see Chapter 84, article 9.

**3-106 Division; aircraft; purchase; use; report; contents.**

(1) The division may purchase aircraft for the use of state government and may sell any state aircraft that is not needed or suitable for state uses. State aircraft shall be subject at all times to the written orders of the Governor for use and service in any branch of the state government. The division shall establish an hourly rate for use of a state aircraft by a state official or agency. The hourly rate shall not include an amount to recover the cost of acquisition by purchase, but shall include amounts for items such as variable fuel and oil costs, routine maintenance costs, landing fees, and preventive maintenance reserves. Such funds shall only be expended for the purposes provided for by this section.

(2) It is the intent of the Legislature that the use of state-owned, chartered, or rented aircraft by the division shall be for the sole purpose of state business. The division shall electronically file with the Clerk of the Legislature a quarterly report on the use of all state-owned, chartered, or rented aircraft by the division that includes the following information for each trip: The name of the agency or other entity traveling; the name of each individual passenger; all purposes of the trip; the destination and intermediate stops; the miles flown; and the duration of the trip.

**Source:** Laws 1945, c. 5, § 5, p. 82; Laws 2014, LB1016, § 2; Laws 2017, LB339, § 6.

Operative date July 1, 2017.

**3-107 Division; general supervision; state funds; expenditure; recovery.**

The division shall have general supervision over aeronautics within this state. It is empowered and directed to encourage, foster, and assist in the development of aeronautics in this state and encourage the establishment of airports and other air navigation facilities. No state funds for the acquisition, engineering, construction, improvement, or maintenance of airports shall be expended upon any project or for any work upon any such project which is not done under the supervision of the division. When any airport which has received state grant funds pursuant to the State Aeronautics Act ceases to be an airport or a privately owned public use airport, the division shall, consistent with all other provisions of state and federal law, seek to recover so much of the state funds provided to the airport as it may and shall deposit any such funds so recovered into the Aeronautics Cash Fund.

**Source:** Laws 1945, c. 5, § 6(1), p. 83; Laws 1995, LB 609, § 3; Laws 2017, LB339, § 7.

Operative date July 1, 2017.

**3-108 Division; cooperate with federal government, political subdivisions, and others engaged in aeronautics; hearings; reports; contents.**

The division shall cooperate with and assist the federal government, the political subdivisions of this state, and others engaged in aeronautics or the promotion of aeronautics and seek to coordinate the aeronautical activities of these bodies. To this end, the division is empowered to confer with or to hold joint hearings with any federal aeronautical agency in connection with any matter arising under the State Aeronautics Act, or relating to the sound development of aeronautics, and to avail itself of the cooperation, services, records, and facilities of such federal agencies, as fully as may be practicable, in the administration and enforcement of the act. The division shall reciprocate by furnishing to the federal agencies its cooperation, services, records, and facilities, insofar as may be practicable. The division shall report to the appropriate federal agency all accidents in aeronautics in this state of which it is informed and preserve, protect, and prevent the removal of the component parts of any aircraft involved in an accident being investigated by it until a federal agency institutes an investigation. The division shall report to the appropriate federal agency all refusals to register federal licenses, certificates, or permits and all revocations of certificates of registration, and the reasons therefor, and all penalties, of which it has knowledge, imposed upon airmen for violations of the laws of this state relating to aeronautics or for violations of the rules, regulations, or orders of the division.

**Source:** Laws 1945, c. 5, § 6(2), p. 83; Laws 2017, LB339, § 8.  
Operative date July 1, 2017.

**3-109 Division; powers; rules and regulations; applicability to federal government.**

The division may (1) perform such acts, (2) issue and amend such orders, (3) adopt and promulgate such reasonable general or special rules, regulations, and procedure, and (4) establish such minimum standards, consistent with the State Aeronautics Act, as it shall deem necessary to carry out the act and to perform its duties under the act as commensurate with and for the purpose of protecting and insuring the general public interest and safety, the safety of persons receiving instruction concerning, or operating, using, or traveling in aircraft, and of persons and property on land or water, and to develop and promote aeronautics in this state. No rule or regulation of the division shall apply to airports or other air navigation facilities owned or controlled by the federal government within this state.

**Source:** Laws 1945, c. 5, § 6(3), p. 83; Laws 1947, c. 9, § 1; Laws 2017, LB339, § 9.  
Operative date July 1, 2017.

**3-110 Rules and regulations; conform to federal regulation.**

All rules and regulations adopted and promulgated by the division under the authority of the State Aeronautics Act shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics, the regulations duly promulgated thereunder, and rules and standards issued from time to time pursuant thereto.

**Source:** Laws 1945, c. 5, § 6(4), p. 84; Laws 2017, LB339, § 10.  
Operative date July 1, 2017.

**3-111 Rules and regulations; where kept.**

The division shall keep on file with the Secretary of State and at the principal office of the division a copy of all its rules and regulations for public inspection.

**Source:** Laws 1945, c. 5, § 6(5), p. 84; Laws 1976, LB 460, § 4; Laws 2017, LB339, § 11.

Operative date July 1, 2017.

**3-113 Division; engineering and technical services; availability.**

The division may, insofar as is reasonably possible, offer its engineering or other technical services, without charge, to any municipality or to any person owning a privately owned public use airport desiring them in connection with the construction, maintenance, or operation or the proposed construction, maintenance, or operation of an airport or restricted landing area.

**Source:** Laws 1945, c. 5, § 6(7), p. 84; Laws 1995, LB 609, § 4; Laws 2017, LB339, § 12.

Operative date July 1, 2017.

**3-114 Division; represent state in aeronautical matters.**

The division may represent the state in aeronautical matters before federal agencies and other state agencies.

**Source:** Laws 1945, c. 5, § 6(8), p. 85; Laws 2017, LB339, § 13.

Operative date July 1, 2017.

**3-115 Actions by or against division; intervention.**

The division may participate as party plaintiff or defendant, or as intervenor on behalf of this state, or any municipality or citizen thereof, in any controversy having to do with any claimed encroachment by the federal government or any foreign state upon any state or individual rights pertaining to aeronautics.

**Source:** Laws 1945, c. 5, § 6(9), p. 85; Laws 2017, LB339, § 14.

Operative date July 1, 2017.

**3-116 Enforcement; intergovernmental cooperation.**

The division, the director, and every state, county, and municipal officer, charged with the enforcement of state and municipal laws, shall enforce and assist in the enforcement of the State Aeronautics Act, all rules and regulations adopted and promulgated pursuant thereto, and all other laws of this state relating to aeronautics. In the aid of such enforcement, general police powers are hereby conferred upon the director, and such of the officers and employees of the division as may be designated by it, to exercise such powers. The division is further authorized, in the name of this state, to enforce the act and the rules and regulations adopted and promulgated pursuant thereto by injunction in the courts of this state. Municipalities and persons owning privately owned public use airports are authorized to cooperate with the division in the development of aeronautics and aeronautical facilities in this state. The division may use the facilities and services of other agencies of the state to the utmost extent possible

and such agencies are authorized and directed to make available such facilities and services.

**Source:** Laws 1945, c. 5, § 6(10), p. 85; Laws 1995, LB 609, § 5; Laws 2017, LB339, § 15.

Operative date July 1, 2017.

**3-117 Director; investigations; hearings; oaths; certify official acts; subpoenas; compel attendance of witnesses; violation; penalty.**

The director, or any officer or employee of the division designated by it, shall have the power to hold investigations, inquiries, and hearings concerning matters covered by the State Aeronautics Act and orders, rules, and regulations of the division and concerning accidents in aeronautics within this state. All hearings so conducted shall be open to the public. The director, and every officer or employee of the division designated by it to hold any inquiry, investigation, or hearing, shall have power to administer oaths and affirmations, certify to all official acts, issue subpoenas, and compel the attendance and testimony of witnesses and the production of papers, books, and documents. In case of a failure to comply with any subpoena or order issued under the authority of the act, the division or its authorized representative may invoke the aid of any court of this state of general jurisdiction. The court may thereupon order the witness to comply with the requirements of the subpoena or order or to give evidence touching the matter in question. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

**Source:** Laws 1945, c. 5, § 6(11), p. 85; Laws 2017, LB339, § 16.

Operative date July 1, 2017.

**3-118 Division; reports of investigations or hearings; evidence; how used.**

In order to facilitate the making of investigations by the division, in the interest of public safety and the promotion of aeronautics, the public interest requires, and it is, therefor, provided, that the reports of investigations or hearings, or any part thereof, shall not be admitted in evidence or used for any purpose in any suit, action, or proceeding, growing out of any matter referred to in the investigation, hearing, or report thereof, except in case of criminal or other proceedings instituted on behalf of the division or this state under the State Aeronautics Act and other laws of this state relating to aeronautics, nor shall any member of the commission, the director, or any officer or employee of the division be required to testify to any facts ascertained in, or information gained by reason of, his or her official capacity, or be required to testify as an expert witness in any suit, action, or proceeding involving any aircraft. Subject to the foregoing provisions, the division may, in its discretion, make available to appropriate federal and state agencies information and material developed in the course of its hearings and investigations.

**Source:** Laws 1945, c. 5, § 6(12), p. 86; Laws 2017, LB339, § 17.

Operative date July 1, 2017.

**3-119 Division; assist in acquisition, development, operation, or maintenance of airports.**

The division may render assistance in the acquisition, development, operation, or maintenance of privately owned public use airports or airports owned,

controlled, or operated or to be owned, controlled, or operated by municipalities in this state out of appropriations made by the Legislature for that purpose.

**Source:** Laws 1945, c. 5, § 6(13), p. 87; Laws 1995, LB 609, § 6; Laws 2017, LB339, § 18.

Operative date July 1, 2017.

**3-120 Division; contracts; authorized.**

The division may enter into any contracts necessary to the execution of the powers granted it by the State Aeronautics Act.

**Source:** Laws 1945, c. 5, § 6(14), p. 87; Laws 2017, LB339, § 19.

Operative date July 1, 2017.

**3-121 Division; airway and airport; exclusive right prohibited.**

The division shall grant no exclusive right for the use of any airway, airport, restricted landing area, or other air navigation facility under its jurisdiction. This section shall not prevent the making of leases in accordance with other provisions of the State Aeronautics Act.

**Source:** Laws 1945, c. 5, § 6(15), p. 87; Laws 2017, LB339, § 20.

Operative date July 1, 2017.

**3-123 Division; cooperate with federal government; comply with federal laws.**

The division is authorized to cooperate with the government of the United States, and any agency or department thereof, in the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities in this state and to comply with the provisions of the laws of the United States and any regulations made thereunder for the expenditure of federal money upon such airports and other navigation facilities.

**Source:** Laws 1945, c. 5, § 7(1), p. 87; Laws 2017, LB339, § 21.

Operative date July 1, 2017.

**3-124 Division; acceptance of gifts of money, authorized; terms and conditions.**

The division is authorized to accept federal and other money, either public or private, for and on behalf of this state, any municipality, or any person owning a privately owned public use airport, for the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities, whether such work is to be done by the state, by such municipalities, or by any person owning a privately owned public use airport, or jointly, aided by grants of aid from the United States, upon such terms and conditions as are or may be prescribed by the laws of the United States and any regulations thereunder. The division may act as agent of any municipality of this state or any person owning a privately owned public use airport, upon the request of such municipality or person, in accepting such money in its behalf for airports or other air navigation facility purposes, and in contracting for the acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities, financed either in whole or in part by federal money, and such person or the governing body of any such municipality is authorized to designate the division as its agent for such purposes and to enter into an agreement with the

division prescribing the terms and conditions of such agency in accordance with federal laws, rules, and regulations and with the State Aeronautics Act. Such money as is paid over by the United States Government shall be retained by the state or paid over to the municipalities or persons under such terms and conditions as may be imposed by the United States Government in making such grants.

**Source:** Laws 1945, c. 5, § 7(2), p. 87; Laws 1995, LB 609, § 7; Laws 2017, LB339, § 22.  
Operative date July 1, 2017.

### **3-125 Division; contracts; laws governing.**

All contracts for the acquisition, construction, improvement, maintenance, and operation of airports or other air navigation facilities made by the division, either as the agent of this state, as the agent of any municipality, or as the agent of any person owning a privately owned public use airport, shall be made pursuant to the laws of this state governing the making of like contracts. When the acquisition, construction, improvement, maintenance, and operation of any airport, landing strip, or other air navigation facility is financed wholly or partially with federal money, the division, as agent of the state, of any municipality, or of any person owning a privately owned public use airport, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary.

**Source:** Laws 1945, c. 5, § 7(3), p. 88; Laws 1995, LB 609, § 8; Laws 2017, LB339, § 23.  
Operative date July 1, 2017.

### **3-126 Aeronautics Cash Fund; created; use; investment.**

The Aeronautics Cash Fund is created. All money received by the division pursuant to the State Aeronautics Act shall be remitted to the State Treasurer for credit to the fund. The division is authorized, whether acting for this state, as the agent of any of its municipalities, or as the agent of any person owning a privately owned public use airport, or when requested by the United States Government or any agency or department thereof, to disburse such money. Any money in the Aeronautics 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. The State Treasurer shall transfer any money in the Department of Aeronautics Cash Fund on July 1, 2017, to the Aeronautics Cash Fund.

**Source:** Laws 1945, c. 5, § 7(4), p. 88; Laws 1965, c. 17, § 1, p. 150; Laws 1969, c. 584, § 32, p. 2360; Laws 1978, LB 637, § 1; Laws 1995, LB 7, § 25; Laws 1995, LB 609, § 9; Laws 2009, First Spec. Sess., LB3, § 7; Laws 2017, LB339, § 24.  
Operative date July 1, 2017.

#### **Cross References**

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

### **3-127 Director; duties.**

The director shall (1) administer the State Aeronautics Act, the rules and regulations adopted and promulgated under the act, orders established under the act, and all other laws of the state relative to aeronautics, (2) attend and serve as secretary, but not vote, at all meetings of the commission, (3) appoint, subject to section 3-104, such experts, field and office assistants, clerks, and other employees as may be required and authorized for the proper discharge of the functions of the division and for whose services funds have been appropriated, (4) be in charge of the offices of the division and responsible for the preparation of reports and collection and dissemination of data and other public information relating to aeronautics, and (5) execute all contracts entered into by the division which are legally authorized and for which funds are appropriated.

**Source:** Laws 1945, c. 5, § 8, p. 89; Laws 2017, LB339, § 25.  
Operative date July 1, 2017.

### **3-128 Division; regulation of airports.**

In order to safeguard and promote the general public interest and safety, the safety of persons using or traveling in aircraft and of persons and property on the ground, and the interest of aeronautical progress requiring that airports, restricted landing areas, and air navigation facilities be suitable for the purposes for which they are designed and to carry out the purposes of the State Aeronautics Act, the division may: Recommend airport and restricted landing area sites; license airports, restricted landing areas, or other air navigation facilities; and provide for the renewal and revocation of such licenses in accordance with rules and regulations adopted and promulgated by the division.

**Source:** Laws 1945, c. 5, § 9(1), p. 89; Laws 1967, c. 12, § 1, p. 98; Laws 1972, LB 285, § 1; Laws 1973, LB 391, § 1; Laws 1973, LB 341, § 1; Laws 1976, LB 460, § 5; Laws 2001, LB 329, § 8; Laws 2017, LB339, § 26.  
Operative date July 1, 2017.

### **3-131 License, certificate, permit, or registration; duty to carry, present for inspection, and exhibit.**

The federal license, certificate, or permit, and the evidence of registration in this or another state, if any, required for an airman shall be kept in the personal possession of the airman when the airman is operating within this state and must be presented for inspection upon the demand of any passenger, peace officer of this state, authorized official or employee of the division, or official, manager, or person in charge of any airport in this state upon which the airman shall land or the reasonable request of any other person. The federal aircraft license, certificate, or permit required for aircraft must be carried in every aircraft operating in this state at all times and must be conspicuously posted therein where it may readily be seen by passengers or inspectors and must be presented for inspection upon the demand of any passenger, peace officer of this state, authorized official or employee of the division, or official, manager, or person in charge of any airport in this state upon which the airman shall land or the reasonable request of any person.

**Source:** Laws 1945, c. 5, § 9(4), p. 92; Laws 1973, LB 341, § 4; Laws 2017, LB339, § 27.  
Operative date July 1, 2017.

**3-133 Airports; license; requirement; approval of site; operation without license unlawful.**

Any proposed airport or restricted landing area shall be first licensed by the division before such airport or area shall be used or operated. Any municipality or person acquiring property for the purpose of constructing or establishing an airport or restricted landing area shall, prior to such acquisition, make application to the division for a certificate of approval of the site selected and the general purpose or purposes for which the property is to be acquired, to insure that the property and its use shall conform to minimum standards of safety and shall serve the public interest. It shall be unlawful for any municipality or officer or employee thereof, or for any person, to operate an airport or restricted landing area for which a license has not been issued by the division.

**Source:** Laws 1945, c. 5, § 9(6), p. 93; Laws 2002, LB 446, § 2; Laws 2017, LB339, § 28.

Operative date July 1, 2017.

**3-134 Air navigation facility; certificate of approval; hearing; notice; order; license.**

Whenever the division makes an order granting or denying a certificate of approval of an airport or a restricted landing area, or an original license to use or operate an airport, restricted landing area, or other air navigation facility, and the applicant or any interested municipality, within fifteen days after notice of such order has been sent the applicant by registered or certified mail, demands a public hearing, or whenever the division desires to hold a public hearing, before making an order, such a public hearing in relation thereto shall be held in the municipality applying for the certificate of approval or license or, in case the application was made by anyone other than a municipality, at the county seat of the county in which the proposed airport, restricted landing area, or other air navigation facility is proposed to be situated, or the major portion thereof, if located in more than one county, at which hearing all parties in interest and other persons shall have an opportunity to be heard. Notice of the hearing shall be published by the division in a legal newspaper in or of general circulation in the county in which the hearing is to be held, at least twice, the first publication to be at least fifteen days prior to the date of hearing. After a proper and timely demand has been made, the order shall be stayed until after the hearing, when the division may affirm, modify, or reverse it, or make a new order. If no hearing is demanded, the order shall become effective upon the expiration of the time permitted for making a demand. Where a certificate of approval of an airport or restricted landing area has been issued by the division, it may grant a license for its operation and use, and no hearing may be demanded thereon.

**Source:** Laws 1945, c. 5, § 9(7), p. 94; Laws 1957, c. 242, § 1, p. 816; Laws 2017, LB339, § 29.

Operative date July 1, 2017.

**3-135 Air navigation facility; certificate of approval; hearing; standards to be considered.**

In determining whether to issue a certificate of approval or license for the use or operation of any proposed airport or restricted landing area, the division shall take into consideration (1) its proposed location, size, and layout, (2) the



relationship of the proposed airport or restricted landing area to a comprehensive plan for statewide and nationwide development, (3) whether there are safe areas available for expansion purposes, (4) whether the adjoining area is free from obstructions based on a proper glide ratio, (5) the nature of the terrain, (6) the nature of the uses to which the proposed airport or restricted landing area will be put, and (7) the possibilities for future development.

**Source:** Laws 1945, c. 5, § 9(8), p. 94; Laws 2017, LB339, § 30.  
Operative date July 1, 2017.

**3-137 Air navigation facility; certificate of approval; revocation, grounds.**

The division is empowered to temporarily or permanently revoke any certificate of approval or license issued by it when it shall determine that an airport, restricted landing area, or other navigation facility is not being maintained or used in accordance with the State Aeronautics Act and the rules and regulations lawfully adopted and promulgated pursuant thereto.

**Source:** Laws 1945, c. 5, § 9(10), p. 95; Laws 2017, LB339, § 31.  
Operative date July 1, 2017.

**3-139 Division; certificate of approval, permit, or license; refuse to issue; notice; set forth reasons; inspection of premises.**

If the division refuses to (1) issue a certificate of approval of a license or the renewal of a license for an airport, restricted landing area, or other air navigation facility or (2) permit the registration of any license, certificate, or permit, the division shall set forth its reasons therefor and shall state the requirements to be met before such approval will be given, registration permitted, license granted, or order modified or changed. Any order made by the division pursuant to the State Aeronautics Act shall be served upon the interested persons by either registered or certified mail or in person. To carry out the act, the director, officers, and employees of the division and any officers, state or municipal, charged with the duty of enforcing the act may inspect and examine at reasonable hours any premises, and the buildings and other structures thereon, where airports, restricted landing areas, flying clubs, or other air navigation facilities or aeronautical activities are operated or carried on.

**Source:** Laws 1945, c. 5, § 10(1), p. 95; Laws 1957, c. 242, § 2, p. 817; Laws 1976, LB 460, § 6; Laws 2017, LB339, § 32.  
Operative date July 1, 2017.

**3-140 Appeal; procedure.**

Any person aggrieved by an order of the division or by the granting or denial of any license, certificate, or registration may appeal the order or such granting or denial, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1945, c. 5, § 10(2), p. 96; Laws 1988, LB 352, § 8; Laws 2017, LB339, § 33.  
Operative date July 1, 2017.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**3-141 Division; air navigation facilities; acquire by purchase, gift, or condemnation; establish; improve; operate; dispose of property; exception.**

The division is authorized and empowered, on behalf of and in the name of this state, within the limitation of available appropriations, to (1) acquire, by purchase, gift, devise, lease, condemnation proceedings, or otherwise, real or personal property for the purpose of establishing and constructing airports, restricted landing areas, and other air navigation facilities, (2) acquire in like manner, own, control, establish, construct, enlarge, improve, maintain, equip, operate, regulate, and police such airports, restricted landing areas, and other air navigation facilities either within or without this state, (3) make, prior to any such acquisition, investigations, surveys, and plans, (4) erect, install, construct, and maintain at such airports facilities for the servicing of aircraft and for the comfort and accommodation of air travelers, and (5) dispose of any such property, airport, or restricted landing area or any other air navigation facility by sale, lease, or otherwise, in accordance with the laws of this state governing the disposition of other like property of the state. The division may not, however, acquire or take over any airport, restricted landing area, or other air navigation facility owned or controlled by a municipality of this state without the consent of such municipality. The division may erect, equip, operate, and maintain on any airport such buildings and equipment as are necessary and proper to establish, maintain, and conduct such airport and air navigation facilities connected therewith.

**Source:** Laws 1945, c. 5, § 11(1), p. 96; Laws 2017, LB339, § 34.  
Operative date July 1, 2017.

**3-142 Division; airports; easements; acquire by condemnation.**

Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and restricted landing areas acquired or operated under the State Aeronautics Act, the division may acquire, in the same manner as is provided for the acquisition of property for airport purposes, easements through or other interests in air space over land or water, interest in airport hazards outside the boundaries of the airports or restricted landing areas, and such other airport protection privileges as are necessary to insure safe approaches to the landing areas of the airports and restricted landing areas and the safe and efficient operation thereof. The division may acquire, in the same manner, the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from such airport hazards for the purpose of maintaining and repairing such lights and marks. This authority shall not be so construed as to limit the right, power, or authority of the state or any municipality to zone property adjacent to any airport or restricted landing area pursuant to any law of this state.

**Source:** Laws 1945, c. 5, § 11(2), p. 97; Laws 2017, LB339, § 35.  
Operative date July 1, 2017.

**3-143 Division; joint activities; authorized.**

The division may engage in all activities jointly with the United States, with other states, with municipalities or other agencies of this state, and with persons owning privately owned public use airports.

**Source:** Laws 1945, c. 5, § 11(3), p. 97; Laws 1995, LB 609, § 10; Laws 2017, LB339, § 36.  
Operative date July 1, 2017.

**3-144 Division; right of eminent domain; procedure.**

The division may exercise the right of eminent domain, in the name of the state, for the purpose of acquiring any property which it is authorized to acquire by condemnation. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. The fact that the property so needed has been acquired by the owner under power of eminent domain shall not prevent its acquisition by the division by the exercise of the right of eminent domain conferred in the State Aeronautics Act. The division shall not be precluded from abandoning the condemnation of any such property in any case where possession thereof has not been taken. Nothing in the State Aeronautics Act shall be construed as granting to privately owned public use airports the authority to exercise the power of eminent domain nor shall anything in the State Aeronautics Act be construed as granting to the division or any municipality the authority to exercise the right of eminent domain for the purpose of acquiring lands or easements for the sole use or benefit of privately owned public use airports.

**Source:** Laws 1945, c. 5, § 11(4), p. 97; Laws 1951, c. 101, § 26, p. 458; Laws 1995, LB 609, § 11; Laws 2017, LB339, § 37.  
Operative date July 1, 2017.

**3-145 Division; airport; lease; sell; supplies.**

The division may (1) lease, for a term not exceeding ten years, such airports, other air navigation facilities, or real property acquired or set apart for airport purposes, to private parties, any municipal or state government, the national government, or any department of any such government for operation, (2) lease or assign, for a term not exceeding ten years, to private parties, any municipal or state government, the national government, or any department of any such government for operation or other use consistent with the purposes of the State Aeronautics Act, space, area, improvements, or equipment on such airports, (3) sell any part of such airports, other air navigation facilities, or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and (4) confer the privilege or concession of supplying, upon the airports, goods, commodities, things, services, and facilities, so long as in each case in so doing the public is not deprived of its rightful, equal, and uniform use thereof.

**Source:** Laws 1945, c. 5, § 11(5), p. 98; Laws 2017, LB339, § 38.  
Operative date July 1, 2017.

**3-146 Division; rentals; power to determine; charges; lien; enforce.**

The division may determine the charges or rental for the use of any properties and the charges for any service or accommodations under its control and the terms and conditions under which such properties may be used, so long as in all cases the public shall not be deprived of its rightful, equal, and uniform use of such property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expenses of operation to the state. To enforce the payment of charges, the state shall have a lien which the division may enforce, substan-

tially as is provided by law for liens and the enforcement thereof, for repairs to or the improvement, storage, or care of any personal property.

**Source:** Laws 1945, c. 5, § 11(6), p. 98; Laws 2017, LB339, § 39.  
Operative date July 1, 2017.

**3-147 Airports; acquisition of land; purpose.**

The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of any airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities, whether by the state separately or jointly with any municipality, municipalities, or any person owning a privately owned public use airport; the assistance of this state in any such acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation; and the exercise of any other powers granted to the division are hereby declared to be public and governmental functions exercised for a public purpose and matters of public necessity. Such lands and other property and privileges acquired are declared to be public property.

**Source:** Laws 1945, c. 5, § 12, p. 99; Laws 1995, LB 609, § 12; Laws 2001, LB 173, § 2; Laws 2017, LB339, § 40.  
Operative date July 1, 2017.

**3-148 Aircraft fuel tax; Aircraft Fuel Tax Fund; created; distribution; terms, defined.**

There is hereby imposed a tax of five cents per gallon upon aviation gasoline and a tax of three cents per gallon upon aviation jet fuel purchased for and used in aircraft within the State of Nebraska. Such aircraft tax shall be levied, collected, and refunded in the manner provided in Chapter 66, article 4, with reference to other motor fuel. The State Treasurer shall credit the aircraft tax and fees so collected and remitted to a special fund to be known as the Aircraft Fuel Tax Fund, which fund shall be distributed as provided in this section. The State Treasurer shall make all refunds as provided in sections 3-150 and 3-151 from the fund, and the balance of the aircraft tax shall be credited to the Aeronautics Cash Fund.

For purposes of this section, aviation gasoline means fuel used in aircraft meeting the criteria established for motor vehicle fuel in section 66-482. The terms aviation fuel and aircraft fuel as used in the statutes include both aviation gasoline and aviation jet fuel.

**Source:** Laws 1945, c. 5, § 13, p. 99; Laws 1947, c. 6, § 1, p. 67; Laws 1965, c. 18, § 1, p. 152; Laws 1965, c. 17, § 2, p. 150; Laws 1965, c. 8, § 8, p. 93; Laws 1985, LB 272, § 1; Laws 1991, LB 627, § 1; Laws 1992, LB 1013, § 1; Laws 2017, LB339, § 41.  
Operative date July 1, 2017.

**3-149 Aircraft fuel tax; collection; violation; penalty.**

The suppliers, distributors, wholesalers, and importers defined in Chapter 66, article 4, shall collect the tax as prescribed in section 3-148, keep an account thereof separately from other fuel tax, and remit the tax collected accordingly to the Tax Commissioner. The Tax Commissioner shall remit the tax to the State Treasurer in the same manner as is provided by law for the collection and

remittance of motor vehicle fuel tax. No other or different tax shall be imposed for fuel bought for and used in aircraft. Such tax shall be used for the purposes set forth in the State Aeronautics Act. The penalty for violation of the provisions of this section relating to the collection and remittance of the tax shall be the same as set forth for the violation of the law with reference to the motor fuel tax contained in Chapter 66, article 7, and the right of enforcement and the penalties shall be likewise applicable as set forth therein.

**Source:** Laws 1945, c. 5, § 14, p. 100; Laws 1985, LB 272, § 2; Laws 1991, LB 627, § 2; Laws 1992, LB 1013, § 2; Laws 1994, LB 1160, § 48; Laws 2017, LB339, § 42.  
Operative date July 1, 2017.

### **3-152 Violations; penalty.**

Any person violating any of the provisions of the State Aeronautics Act, or any of the rules, regulations, or orders adopted, promulgated, or issued pursuant thereto, shall be guilty of a Class II misdemeanor.

**Source:** Laws 1945, c. 5, § 17, p. 101; Laws 1977, LB 40, § 29; Laws 2017, LB339, § 43.  
Operative date July 1, 2017.

### **3-154 Act, how cited.**

Sections 3-101 to 3-164 shall be known and may be cited as the State Aeronautics Act.

**Source:** Laws 1945, c. 5, § 21, p. 101; Laws 2017, LB339, § 44.  
Operative date July 1, 2017.

### **3-155 Real property formerly used as army airfields; disposal; conditions.**

(1) The division is hereby authorized and directed to dispose of all real property held by the division and formerly used by the United States as army airfields, and which is not required for airport operational use purposes. The division shall seek approval from the Federal Aviation Administration to dispose of such property. The property may be platted and subdivided into lots or parcels to be sold separately so as to obtain the greatest total sale price.

(2) The division shall dedicate the necessary roads for airport access and shall reserve such easements for access, utilities, drainage, and other purposes as may be necessary or convenient to maintain the airports as operational. The sales may be made subject to such terms, conditions, and restrictions as may be required by the deeds by which such property was conveyed to the State of Nebraska by the Federal Aviation Administration. When approval is received, the division shall have such property appraised by noninterested appraisers qualified to make appraisals based on experience and who have professional status as appraisers of real property. The appraisers shall be selected by the division based on competitive bids received after three weeks' notice of invitation for bids has been published in at least two newspapers of general circulation throughout the state. The notice shall state that the selection shall be made of the lowest and best qualified bidders and that the division reserves the right to reject any and all bids and to readvertise for further bids.

(3) Each appraiser's report shall contain (a) an opinion as to the fair market value of the lands appraised, showing a segregation of actual land value,

elements and basis of damage, and depreciated in place value of buildings and improvements, if any, (b) a report of income derived from the land in recent years, (c) the adaptability of the land, including the most profitable or highest and best use, (d) a report of a personal inspection of the lands appraised, including a detailed description of their physical characteristics and conditions, (e) the general history of the property and its environs, and a statement of the character of the area surrounding the land being appraised, indicating any of the favorable and unfavorable influences, (f) a listing of recent sales of similar property in the area, showing seller, purchaser, date of sale, selling price, acreage involved, buildings and improvements involved, if any, and an estimate of the value of such improvements, and if there is a difference in value between comparable sales and the property appraised, a discussion of the difference in value to be included, (g) a listing of recent offerings for sale of property in the same general area, including the property being appraised, if recently offered, and the prices quoted, if any, (h) a trend of land values in the area and current land or real estate market conditions, (i) the actual valuation of real property in the community, (j) the effective date of valuation, (k) a statement of the qualifications of the appraiser including a statement by the appraiser that he or she has no personal interest, present or prospective, in the land being appraised, and (l) the signature of the appraiser and date of report.

(4) Such property shall be sold to the highest bidder, but in no case shall such property be sold at less than the appraised value. Notice of such sale and time and place where the same will be held shall be given as provided in section 72-258. When the highest bid is less than the appraised value, the sale shall be canceled and except for property leased pursuant to section 3-157 the property shall be offered for sale again within one year after the date of the previous offering.

**Source:** Laws 1969, c. 23, § 1, p. 199; Laws 1971, LB 165, § 1; Laws 1972, LB 1481, § 1; Laws 1978, LB 637, § 2; Laws 1979, LB 187, § 11; Laws 2017, LB339, § 45.  
Operative date July 1, 2017.

**3-156 Aeronautics Trust Fund; created; real property; proceeds of sale; how used; investment.**

The Aeronautics Trust Fund is created. The necessary expenses incurred in the sale of property under section 3-155 shall be paid from the Aeronautics Cash Fund, and the proceeds from the sale of such property shall be credited to the Aeronautics Trust Fund after reimbursement of costs of sale have been made to the Aeronautics Cash Fund. The net proceeds from the disposal of such property shall be used by the division in conformance with any agreements upon which the Federal Aviation Administration conditions its consent to the sale of the aforementioned land and the quit claim deeds (1) filed in the office of the register of deeds of Dodge County on November 17, 1947, and recorded in Deeds Record 89 on page 342 and September 16, 1948, and recorded in Deeds Record 89 on page 578, (2) filed in the office of the register of deeds of Red Willow County on September 16, 1948, in Deeds Record 71 on page 17, September 14, 1966, in Deeds Record 91 on page 281, and December 17, 1968, in Deeds Record 93 on page 549, (3) filed in the office of the register of deeds of Clay County on November 17, 1947, in Deeds Record 86 on page 561, September 16, 1948, in Deeds Record 87 on page 148, and March 14, 1968, in Deeds Record 95 on page 321, (4) filed in the office of the register of deeds of

Fillmore County on September 16, 1948, in Deeds Record 39 on page 229, February 21, 1968, in Deeds Record 25 on page 90, January 26, 1948, in Deeds Record 39 on page 189, September 21, 1948, in Deeds Record 39 on page 236, and February 13, 1968, in Deeds Record 25 on page 83, and (5) filed in the office of the register of deeds of Thayer County on January 31, 1948, in Deeds Record 48 on page 493, September 16, 1948, in Deeds Record 48 on page 581, and December 29, 1967, in Deeds Record 58 on page 531, and the rules and regulations of the Federal Aviation Administration, part 155, adopted December 7, 1962. Any money in the Aeronautics Trust 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. The State Treasurer shall transfer any money in the Department of Aeronautics Trust Fund on July 1, 2017, to the Aeronautics Trust Fund.

**Source:** Laws 1969, c. 23, § 2, p. 200; Laws 1971, LB 165, § 2; Laws 1995, LB 7, § 26; Laws 2017, LB339, § 46.  
Operative date July 1, 2017.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**3-157 Division; real property; lease; when; requirements.**

The division may lease for a period not exceeding twelve years real property held by the division that has been offered for sale for two consecutive years and has not been sold. The lease shall provide for annual rental payments based on fair rental value. The rental payments shall be deposited in the Aeronautics Cash Fund. The division shall cause reappraisals to be made of the land under lease when it deems it necessary due to changes in buildings or improvements, changes in the land, or for other reasons. The division may, after the expiration of any lease, offer such land for sale by public auction as set forth in section 3-155 or may enter into another lease.

**Source:** Laws 1978, LB 637, § 3; Laws 1980, LB 896, § 1; Laws 2002, LB 446, § 3; Laws 2017, LB339, § 47.  
Operative date July 1, 2017.

**3-158 Person renting aircraft; insurance information; notice.**

Any person who in the ordinary course of his or her business rents an aircraft to another person shall deliver to the renter a written notice stating the nature and extent of insurance coverage provided, if any, for the renter against loss of or damage to the hull of the aircraft or liability arising out of the ownership, maintenance, or use of the aircraft. The notice shall contain the name of the person giving the notice and shall be in the form prescribed by rule or regulation which the division shall adopt and promulgate.

**Source:** Laws 1986, LB 781, § 1; Laws 2017, LB339, § 48.  
Operative date July 1, 2017.

**3-159 Authorization to purchase new aircraft; sale of aircraft.**

The Executive Board of the Legislative Council pursuant to the authority granted in Laws 2013, LB194, section 9, commissioned an independent study to enable the Legislature to determine whether the state should purchase or otherwise acquire an aircraft for state purposes and what type of aircraft

should be acquired, if any. After completion and review of the study, the Legislature authorized the Department of Aeronautics to purchase a new aircraft in 2014. It is the intent of the Legislature to fund the purchase with General Funds and other funds. The Legislature also directed the department, upon taking possession of a new aircraft, to sell the state's 1982 Piper Cheyenne aircraft, with the proceeds retained for use for preventive maintenance funding for the new aircraft.

**Source:** Laws 2014, LB1016, § 1; Laws 2017, LB339, § 49.  
Operative date July 1, 2017.

**3-160 Employees of Department of Aeronautics; transfer to Division of Aeronautics; how treated.**

On and after July 1, 2017, positions of employment in the Department of Aeronautics related to the powers, duties, and functions transferred pursuant to Laws 2017, LB339, are transferred to the Division of Aeronautics of the Department of Transportation. For purposes of the transition, employees of the Department of Aeronautics shall be considered employees of the Department of Transportation and shall retain their rights under the state personnel system or pertinent bargaining agreement, and their service shall be deemed continuous. This section does not grant employees any new rights or benefits not otherwise provided by law or bargaining agreement or preclude the division or the director from exercising any of the prerogatives of management set forth in section 81-1311 or as otherwise provided by law. This section is not an amendment to or substitute for the provisions of any existing bargaining agreements.

**Source:** Laws 2017, LB339, § 50.  
Operative date July 1, 2017.

**3-161 Reference to Department of Aeronautics in contracts or other documents; how construed; contracts and property; how treated.**

On and after July 1, 2017, whenever the Department of Aeronautics is referred to or designated by any contract or other document in connection with the duties and functions transferred to the Division of Aeronautics of the Department of Transportation pursuant to Laws 2017, LB339, such reference or designation shall apply to such division. All contracts entered into by the Department of Aeronautics prior to July 1, 2017, in connection with the duties and functions transferred to the division are hereby recognized, with the division succeeding to all rights and obligations under such contracts. Any cash funds, custodial funds, gifts, trusts, grants, and any appropriations of funds from prior fiscal years available to satisfy obligations incurred under such contracts shall be transferred and appropriated to the division for the payments of such obligations. All documents and records transferred, or copies of the same, may be authenticated or certified by the division for all legal purposes.

**Source:** Laws 2017, LB339, § 51.  
Operative date July 1, 2017.

**3-162 Actions and proceedings; how treated.**

No suit, action, or other proceeding, judicial or administrative, lawfully commenced prior to July 1, 2017, or which could have been commenced prior to that date, by or against the Department of Aeronautics, or the director or any



employee thereof in such director's or employee's official capacity or in relation to the discharge of his or her official duties, shall abate by reason of the transfer of duties and functions from the Department of Aeronautics to the Division of Aeronautics of the Department of Transportation.

**Source:** Laws 2017, LB339, § 52.  
Operative date July 1, 2017.

**3-163 Provisions of law; how construed.**

On and after July 1, 2017, unless otherwise specified, whenever any provision of law refers to the Department of Aeronautics in connection with duties and functions transferred to the Division of Aeronautics of the Department of Transportation, such law shall be construed as referring to such division.

**Source:** Laws 2017, LB339, § 53.  
Operative date July 1, 2017.

**3-164 Property of Department of Aeronautics; transfer to Division of Aeronautics; appropriation and salary limit; how treated.**

On July 1, 2017, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the Department of Aeronautics pertaining to the duties and functions transferred to the Division of Aeronautics of the Department of Transportation pursuant to Laws 2017, LB339, shall become the property of such division.

Any appropriation and salary limit provided in any legislative bill enacted by the One Hundred Fifth Legislature, First Session, to Agency No. 17, Department of Aeronautics, in the following program classifications, shall be null and void, and any such amounts are hereby appropriated to Agency No. 27, Department of Transportation: Program No. 26, Administration and Services; Program No. 301, Public Airports; and Program No. 596, State-Owned Aircraft. Any financial obligations of the Department of Aeronautics that remain unpaid as of June 30, 2017, and that are subsequently certified as valid encumbrances to the accounting division of the Department of Administrative Services pursuant to sections 81-138.01 to 81-138.04, shall be paid by the Division of Aeronautics of the Department of Transportation from the unexpended balance of appropriations existing in such program classifications on June 30, 2017.

**Source:** Laws 2017, LB339, § 54.  
Operative date July 1, 2017.

**ARTICLE 2**

**AIRPORTS AND LANDING FIELDS**

- Section
- 3-201. Terms, defined.
- 3-201.01. Temporary airports and landing fields; approval; application; purpose of landing area.
- 3-215. Municipality; general powers; rules and regulations; adopt.
- 3-218. Contracts; laws governing.
- 3-222. Municipality; terms, defined.
- 3-227. Board; powers.
- 3-228. Joint agreements; ordinances enacted concurrent with each other; effect; publication.
- 3-239. Airport authorities or municipalities; project applications under federal act; approval by division; required; division, act as agent; direct receipt of federal funds; when.

**3-201 Terms, defined.**

For the purpose of the Revised Airports Act, unless specifically otherwise provided in the act, the definitions of words, terms, and phrases appearing in the State Aeronautics Act are hereby adopted. The following words, terms, and phrases shall in the Revised Airports Act have the meanings given in this section, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires: (1) Municipality means any county, city, or village of this state or any city airport authority established pursuant to the Cities Airport Authorities Act and (2) airport purposes means and includes airport, restricted landing area, and other air navigation facility purposes.

**Source:** Laws 1945, c. 34, § 1, p. 156; Laws 1957, c. 9, § 13, p. 125; Laws 2003, LB 5, § 1; Laws 2017, LB339, § 55.  
Operative date July 1, 2017.

**Cross References**

Cities Airport Authorities Act, see section 3-514.  
For definitions in State Aeronautics Act, see section 3-101.  
State Aeronautics Act, see section 3-154.

**3-201.01 Temporary airports and landing fields; approval; application; purpose of landing area.**

Any proposed airport, restricted landing area, or other air navigation facility which will be in existence for less than thirty consecutive days shall first be approved by the Division of Aeronautics of the Department of Transportation before any such airport, landing area, or other facility shall be used or operated. Any municipality or person proposing the use of property for such purpose shall first make application for a temporary permit for the site selected and the general purpose or purposes for which the property will be used, to insure that the property and its use shall conform to minimum standards of safety and shall serve the public interest. Designation of the location and approval of sites for the proposed temporary airports, restricted landing areas, and other air navigation facilities as provided in section 3-104 may be delegated to the division by the Nebraska Aeronautics Commission. The provisions of this section shall not apply to restricted landing areas designated for personal use pursuant to section 3-136.

**Source:** Laws 1976, LB 460, § 8; Laws 2017, LB339, § 56.  
Operative date July 1, 2017.

**3-215 Municipality; general powers; rules and regulations; adopt.**

In addition to the general power conferred in the Revised Airports Act and section 18-1502 and without limitation thereof, a municipality which has established or may hereafter establish airports, restricted landing areas, or other air navigation facilities, or which has acquired or set apart or may hereafter acquire or set apart real property for such purpose or purposes, is hereby authorized:

(1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation, and regulation thereof in an officer, a board, or a body of such municipality by ordinance or resolution which shall prescribe the powers and duties of such officer, board, or body. The expense of such

construction, enlargement, improvement, maintenance, equipment, operation, and regulation shall be a responsibility of the municipality;

(2) To adopt and amend all needful rules, regulations, and ordinances for the management, government, and use of any properties under its control, whether within or without the territorial limits of the municipality; to appoint airport guards or police, with full police powers; to fix by ordinance or resolution, as may be appropriate, penalties for the violation of the rules, regulations, and ordinances, and enforce the penalties in the same manner in which penalties prescribed by other rules, regulations, and ordinances of the municipality are enforced. For purposes of such management, government, and direction of public use, such part of all highways, roads, streets, avenues, boulevards, and territory as adjoins or lies within five hundred feet of the limits of any airport or restricted landing area acquired or maintained under the Revised Airports Act and section 18-1502 shall be under like control and management of the municipality. It may also adopt and enact rules, regulations, and ordinances designed to safeguard the public upon or beyond the limits of private airports or landing strips within such municipality or its police jurisdiction against the perils and hazards of instrumentalities used in aerial navigation. Rules, regulations, and ordinances shall be published as provided by general law or the charter of the municipality for the publication of similar rules, regulations, and ordinances. They must conform to and be consistent with the laws of this state and the rules and regulations of the Division of Aeronautics of the Department of Transportation and shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and rules and standards issued from time to time pursuant thereto;

(3) To lease for a term not exceeding ten years such airports, other air navigation facilities, or real property acquired or set apart for airport purposes to private parties, any municipal or state government, the national government, or any department of any such government for operation; to lease or assign space, area, improvements, or equipment on such airports for a term not exceeding ten years to private parties, any municipal or state government, the national government, or any department of any such government for operation or use consistent with the purposes of the Revised Airports Act and section 18-1502; to sell any part of such airports, other air navigation facilities, or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and to confer the privileges or concessions of supplying upon its airports goods, commodities, things, services, and facilities, so long as, in each case, the public is not thereby deprived of its rightful, equal, and uniform use thereof;

(4) To sell or lease any real or personal property, acquired for airport purposes and belonging to the municipality, which, in the judgment of its governing body, may not be required for aeronautic purposes, in accordance with the laws of this state, or the provisions of the charter of the municipality, governing the sale or leasing of similar municipally owned property. The proceeds of the sale of any property the purchase price of which was obtained by the sale of bonds shall be deposited in the sinking fund from which funds have been authorized to be taken to finance such bonds. In the event all the proceeds of such sale are not needed to pay the principal of the bonds remaining unpaid, the remainder shall be paid into the general fund of the

municipality. The proceeds of sales of property the purchase price of which was paid from appropriations shall be paid into the general fund of the municipality;

(5) To determine the charges or rental for the use of any properties under its control and the charges for any services or accommodations, and the terms and conditions under which such properties may be used, so long as in all cases the public shall not be deprived of its rightful, equal, and uniform use of such property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expense of operation to the municipality. To enforce the payment of charges, the municipality shall have a lien and may enforce it, substantially as is provided by law for liens and the enforcement thereof, for repairs to or the improvement, storage, or care of any personal property; and

(6) To exercise all powers necessarily incidental to the exercise of the general and special powers granted in the Revised Airports Act.

**Source:** Laws 1945, c. 34, § 8, p. 161; Laws 2017, LB339, § 57.

Operative date July 1, 2017.

### **3-218 Contracts; laws governing.**

All contracts for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports or other air navigation facilities, made by the municipality itself or through the agency of the Division of Aeronautics of the Department of Transportation, shall be made pursuant to the laws of this state governing the making of like contracts, except that where such acquisition, construction, improvement, enlargement, maintenance, equipment, or operation is financed wholly or partly with federal money, the municipality or the division as its agent may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder.

**Source:** Laws 1945, c. 34, § 9(3), p. 164; Laws 2017, LB339, § 58.

Operative date July 1, 2017.

### **3-222 Municipality; terms, defined.**

For purposes of sections 3-221 to 3-232 only, unless another intention clearly appears or the context otherwise requires, this state shall be included in the term municipality, and all the powers conferred upon municipalities in the Revised Airports Act and section 18-1502, if not otherwise conferred by law, are hereby conferred upon this state when acting jointly with any municipality or municipalities. Where reference is made to the governing body of a municipality, that term shall mean, as to the state, the Division of Aeronautics of the Department of Transportation.

**Source:** Laws 1945, c. 34, § 11(2), p. 165; Laws 2017, LB339, § 59.

Operative date July 1, 2017.

### **3-227 Board; powers.**

Such board may exercise, on behalf of the municipalities acting jointly by which it is appointed, all the powers of each of such municipalities granted by the Revised Airports Act, except as otherwise provided in the act. Real property, airports, restricted landing areas, air protection privileges, or personal property

costing in excess of a sum to be fixed by the joint agreement, may be acquired, and condemnation proceedings may be instituted, only by authority of the governing bodies of each of the municipalities involved. The total amount of expenditures to be made by the board for any purpose in any calendar year shall be determined by the municipalities involved by the approval by each on or before the preceding May 1, of a budget for the ensuing fiscal year. Rules and regulations provided for by subdivision (2) of section 3-215 shall become effective only upon approval of each of the appointing governing bodies and the Division of Aeronautics of the Department of Transportation. No real property and no airport, other air navigation facility, or air protection privilege, owned jointly, shall be disposed of by the board, by sale, lease, or otherwise, except by authority of all the appointing governing bodies, but the board may lease space, area, or improvements and grant concessions on airports for aeronautical purposes or purposes incidental thereto, subject to subdivision (3) of section 3-215. This section shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12.

**Source:** Laws 1945, c. 34, § 11(7), p. 166; Laws 2001, LB 173, § 4; Laws 2017, LB339, § 60.  
Operative date July 1, 2017.

**3-228 Joint agreements; ordinances enacted concurrent with each other; effect; publication.**

Each municipality, acting jointly with another, pursuant to the Revised Airports Act, is authorized and empowered to enact, concurrently with the other municipalities involved, such ordinances as are provided for by subdivision (2) of section 3-215, and to fix by such ordinances penalties for the violation thereof. Such ordinances, when so concurrently adopted, shall have the same force and effect within the municipalities and on any property jointly controlled by them or adjacent thereto, whether within or without the territorial limits of either or any of them, as ordinances of each municipality involved, and may be enforced in any one of the municipalities in like manner as are its individual ordinances. The consent of the Division of Aeronautics of the Department of Transportation to any such ordinance, where the state is a party to the joint venture, shall be equivalent to the enactment of the ordinance by a municipality. The publication provided for in subdivision (2) of section 3-215 shall be made in each municipality involved in the manner provided by law or charter for publication of its individual ordinances.

**Source:** Laws 1945, c. 34, § 11(8), p. 167; Laws 2017, LB339, § 61.  
Operative date July 1, 2017.

**3-239 Airport authorities or municipalities; project applications under federal act; approval by division; required; division, act as agent; direct receipt of federal funds; when.**

(1) No city airport authority, county airport authority, joint airport authority, or municipality in this state, whether acting alone or jointly with another city airport authority, county airport authority, joint airport authority, or municipality, or with the state, shall submit to any federal agency or department any project application under the provisions of any act of Congress which provides airport planning or airport construction and development funds for the expansion and improvement of the airport system, unless the project and the project

application have been first approved by the Division of Aeronautics of the Department of Transportation.

(2) Except as provided in subsection (3) of this section, no city airport authority, county airport authority, joint airport authority, or municipality shall directly accept, receive, receipt for, or disburse any funds granted by the United States under any act of Congress pursuant to subsection (1) of this section, but it shall designate the division as its agent and in its behalf to accept, receive, receipt for, and disburse such funds. Such authorities and municipalities shall enter into an agreement with the division prescribing the terms and conditions of such agency in accordance with federal laws, rules, and regulations, and applicable laws of this state. Such money as is paid by the United States shall be retained by the state or paid over to the city airport authority, county airport authority, joint airport authority, or municipality under such terms and conditions as may be imposed by the United States in making such grant.

(3) Any city airport authority, county airport authority, joint airport authority, or municipality operating a primary airport may directly accept, receive, receipt for, and disburse any funds granted by the United States for the primary airport under the provisions of any act of Congress pursuant to subsection (1) of this section by informing the division, in writing, of its intent to do so. If an airport loses its status as a primary airport before signing a grant agreement with the United States, the airport shall be subject to subsection (2) of this section.

(4) For purposes of this section:

(a) City airport authority means an authority established pursuant to the Cities Airport Authorities Act;

(b) County airport authority means an authority established under sections 3-601 to 3-622;

(c) Joint airport authority means an authority established under the Joint Airport Authorities Act;

(d) Municipality means any county, city, or village of this state and any other political subdivision, public corporation, authority, or district in this state which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities; and

(e) Primary airport means any airport which:

(i) Receives scheduled passenger air service;

(ii) Has at least ten thousand revenue passenger enplanements or boardings, as officially recorded by the United States, in at least one of the most recent five calendar years for which official numbers are available; and

(iii) Does not receive any funds apportioned by the United States for nonprimary airports.

**Source:** Laws 1947, c. 8, § 1, p. 70; Laws 1957, c. 9, § 15, p. 126; Laws 1980, LB 925, § 1; Laws 2002, LB 446, § 4; Laws 2017, LB339, § 62.

Operative date July 1, 2017.

#### Cross References

Cities Airport Authorities Act, see section 3-514.  
Joint Airport Authorities Act, see section 3-716.

**ARTICLE 3**  
**AIRPORT ZONING**

## Section

- 3-303. Airport hazard; zoning regulations; modifications and exceptions.  
3-332. Division of Aeronautics; municipalities and political subdivisions; assist in planning and developing.

**3-303 Airport hazard; zoning regulations; modifications and exceptions.**

In order to prevent the creation or establishment of airport hazards, every political subdivision that has an airport hazard area within the area of its zoning jurisdiction shall adopt, administer, and enforce, under the police power and in the manner and upon the conditions prescribed in the Airport Zoning Act, airport zoning regulations for such airport hazard area. The regulations shall meet the minimum regulations as prescribed by the Division of Aeronautics of the Department of Transportation and may divide such area into zones and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures may be erected and trees allowed to grow, except that a political subdivision or a joint airport zoning board provided for in section 3-304 may include modifications or exceptions to the airport zoning regulations adopted under the Airport Zoning Act that the political subdivision or joint airport zoning board deems appropriate. Such modifications and exceptions shall not be considered a conflict for purposes of section 3-306. The authority of a political subdivision to adopt airport zoning regulations shall not be conditional upon prior adoption of a comprehensive development plan or a comprehensive zoning ordinance.

**Source:** Laws 1945, c. 233, § 3(1), p. 683; Laws 1961, c. 9, § 1, p. 96; Laws 2010, LB512, § 1; Laws 2013, LB140, § 3; Laws 2017, LB339, § 63.  
Operative date July 1, 2017.

**3-332 Division of Aeronautics; municipalities and political subdivisions; assist in planning and developing.**

The Division of Aeronautics of the Department of Transportation may aid and assist municipalities and other political subdivisions of the state in planning, developing, and carrying out programs for airport zoning in order to secure uniformity therein as far as possible.

**Source:** Laws 1945, c. 233, § 16, p. 691; Laws 2017, LB339, § 64.  
Operative date July 1, 2017.

**ARTICLE 4**  
**REGULATION OF STRUCTURES**

## Section

- 3-403. Structures; erection, maintenance in excess of one hundred fifty feet; permit required.  
3-404. Structures; erection, maintenance in excess of one hundred fifty feet; application; form; contents; permit; issuance; considerations.  
3-405. Appeal; procedure.  
3-407. Structures; lighting; rules and regulations; division adopt.  
3-407.01. Meteorological evaluation tower; marking; owner; registration; contents; duties; failure to comply; effect.

## Section

3-408. Violations; penalty.

3-409. Structure; violations; injunction; removal.

**3-403 Structures; erection, maintenance in excess of one hundred fifty feet; permit required.**

It shall be unlawful for any person, firm, or corporation, without having first applied for and obtained a permit in writing from the Division of Aeronautics of the Department of Transportation, to build, erect, or maintain any structure within the State of Nebraska, the height of which exceeds one hundred fifty feet above the surface of the ground at point of installation.

**Source:** Laws 1955, c. 7, § 3, p. 68; Laws 1963, c. 17, § 1, p. 96; Laws 2017, LB339, § 65.

Operative date July 1, 2017.

**3-404 Structures; erection, maintenance in excess of one hundred fifty feet; application; form; contents; permit; issuance; considerations.**

The application for the permit, required by section 3-403, shall be made in writing on forms prescribed by the Division of Aeronautics of the Department of Transportation and shall contain or be accompanied by details as to the location, construction, height, and dimensions of the proposed structure, the nature of its intended use, and such other information as the Director of Aeronautics may require. Upon the filing of such application, the director shall make an investigation and an aeronautical study of such proposed construction and its effect, if any, upon air navigation, and the health, welfare, and safety of the public. If the director, upon such investigation, shall determine that such proposed structure will not constitute a hazard to air navigation and will not interfere unduly with the public right of freedom of transit in commerce through the air space affected thereby, the director shall issue to the applicant a permit, required by section 3-403, authorizing the erection and construction of such structure, subject to such conditions as to marking and lighting as the division may prescribe by its rules and regulations, authorized by section 3-407. If the director does not so determine, the director shall deny the application. In making such investigation, aeronautical study, and determination, the director shall consider (1) the character of flying operations expected to be conducted in the area concerned, (2) the nature of the terrain, (3) the character of the neighborhood, (4) the uses to which the property concerned is devoted or adaptable, (5) the proximity to existing airports, airways, control areas, and control zones, (6) the height of existing adjacent structures, and (7) all the facts and circumstances existing. The director shall impose only such restrictions or requirements as may be reasonably necessary to effectuate the purposes of sections 3-401 to 3-409.

**Source:** Laws 1955, c. 7, § 4, p. 68; Laws 2017, LB339, § 66.

Operative date July 1, 2017.

**3-405 Appeal; procedure.**

Any person aggrieved by any action of the Division of Aeronautics of the Department of Transportation in granting or denying a permit under the terms



of sections 3-401 to 3-409 may appeal the action, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1955, c. 7, § 5, p. 69; Laws 1988, LB 352, § 9; Laws 2017, LB339, § 67.

Operative date July 1, 2017.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**3-407 Structures; lighting; rules and regulations; division adopt.**

All structures outside the corporate limits of cities and villages, exceeding a height of two hundred feet above the surface of the ground, and all structures within the corporate limits of cities and villages exceeding a height of five hundred feet shall be marked and lighted in accordance with rules and regulations adopted and promulgated by the Division of Aeronautics of the Department of Transportation. The division may adopt and promulgate rules and regulations for the marking and lighting of such structures in a manner calculated to prevent collisions with such structures by aircraft. It shall be the duty of the persons, firms, and corporations owning, maintaining, or using such structures to provide and maintain such marking and lighting.

**Source:** Laws 1955, c. 7, § 7, p. 70; Laws 1993, LB 472, § 1; Laws 2017, LB339, § 68.

Operative date July 1, 2017.

**3-407.01 Meteorological evaluation tower; marking; owner; registration; contents; duties; failure to comply; effect.**

(1) A meteorological evaluation tower, the height of which is at least fifty feet above the surface of the ground at point of installation, shall be marked according to subsection (2) of this section. This section applies to a meteorological evaluation tower that is located outside the corporate limits of a city or village.

(2) A meteorological evaluation tower described in subsection (1) of this section shall: (a) Be painted in seven equal-width and alternating bands of aviation orange and white beginning with orange at the top of the tower and ending with orange at the base; (b) have two or more spherical marker balls at least twenty-one inches in diameter that are aviation orange in color and attached to each outer guy wire connected to the tower with the top ball no further than twenty feet from the top wire connection and the remaining ball or balls at or below the midpoint of the tower on the outer guy wires; and (c) have yellow safety sleeves installed on each outer guy wire extending at least fourteen feet above the anchor point of the guy wire.

(3) The owner of a meteorological evaluation tower subject to this section shall, not less than ten business days prior to erecting the tower, register with the Division of Aeronautics of the Department of Transportation the name and address of the owner, the height and location of the tower, and any other information that the division deems necessary for aviation safety. The owner of a tower subject to this section shall also report the removal of the tower to the division not more than thirty business days after its removal. The division shall make the information received pursuant to this subsection available to the public within five business days.

(4) The owner of a meteorological evaluation tower described in subsection (1) of this section that was erected prior to May 28, 2015, and which is either lighted, marked with balls at least twenty-one inches in diameter, painted, or modified in some other manner so it is recognizable in clear air during daylight hours from a distance of not less than two thousand feet, shall mark the tower as required by subsection (2) of this section within two years after May 28, 2015, or at such time the tower is taken down for maintenance or other purposes, whichever comes first, except that the owner of a tower erected prior to May 28, 2015, which is not lighted, marked, painted, or modified as described in this subsection shall mark such tower as required by subsection (2) of this section within ninety days after May 28, 2015. The registration requirements of subsection (3) of this section shall be performed by the owner of a tower erected prior to May 28, 2015, within fifteen business days after May 28, 2015.

(5) A material failure to comply with the marking and registration requirements of this section shall be admissible as evidence of negligence on the part of an owner of a meteorological evaluation tower in an action in tort for property damage, bodily injury, or death resulting from an aerial collision with such unmarked or unregistered tower.

(6) The division may adopt and promulgate rules and regulations for carrying out the purposes of this section.

**Source:** Laws 2015, LB469, § 6; Laws 2017, LB339, § 69.  
Operative date July 1, 2017.

### **3-408 Violations; penalty.**

Any person, firm, or corporation (1) violating any of the provisions of sections 3-401 to 3-409, (2) submitting false information in the application for a permit, (3) violating any rule or regulation adopted and promulgated by the Division of Aeronautics of the Department of Transportation pursuant to sections 3-401 to 3-409, (4) failing to do and perform any act required by sections 3-401 to 3-409, or (5) violating the terms of any permit issued pursuant to sections 3-401 to 3-409, shall be guilty of a Class III misdemeanor. Each day any violation continues or any structure erected in violation of sections 3-401 to 3-409 shall continue in existence shall constitute a separate offense.

**Source:** Laws 1955, c. 7, § 8, p. 70; Laws 1977, LB 40, § 31; Laws 2015, LB469, § 7; Laws 2017, LB339, § 70.  
Operative date July 1, 2017.

### **3-409 Structure; violations; injunction; removal.**

In addition to the penalties provided for by section 3-408, the erection and maintenance of any structure in violation of sections 3-401 to 3-409 may be enjoined by any court of competent jurisdiction in an action for that purpose commenced by the Division of Aeronautics of the Department of Transportation or any other interested person. The erection of such structure and permitting the same to stand or remain, in violation of sections 3-401 to 3-409, is hereby declared to be a nuisance and the division, or its authorized agent, is authorized to go upon the premises and abate such nuisance by removing such structure after five days' notice to the interested parties, to be served by mail addressed to them at their last-known place of business or residence. The expense incident to the removal of such structure shall be paid by the owners

thereof, and if the division removes such structures as provided in this section, the expense incurred by the division may be recovered from the sale of the structure or its salvage material.

**Source:** Laws 1955, c. 7, § 9, p. 71; Laws 2017, LB339, § 71.  
Operative date July 1, 2017.



## CHAPTER 7

### ATTORNEYS AT LAW

Article.

2. Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act. 7-209.

#### ARTICLE 2

#### LEGAL EDUCATION FOR PUBLIC SERVICE AND RURAL PRACTICE LOAN REPAYMENT ASSISTANCE ACT

Section

- 7-209. Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund; created; investment.

#### **7-209 Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund; created; investment.**

The Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund is created. The fund shall consist of funds appropriated or transferred by the Legislature, funds donated to the legal education for public legal service and rural practice loan repayment assistance program pursuant to section 7-208, and application fees collected under the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act. Any money in the Legal Education for Public Service Loan Repayment Fund on July 18, 2014, shall be transferred to the Legal Education for Public Service and Rural Practice Loan Repayment Assistance 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.

The unexpended, unobligated balance in the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund existing on June 30, 2017, shall be transferred to the General Fund on or before July 30, 2017, as directed by the budget administrator of the budget division of the Department of Administrative Services.

**Source:** Laws 2008, LB1014, § 27; Laws 2014, LB907, § 9; Laws 2017, LB331, § 17.

Effective date May 16, 2017.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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



**BANKS AND BANKING**

**CHAPTER 8  
BANKS AND BANKING**

Article.

1. General Provisions. 8-101 to 8-1,140.
2. Trust Companies. 8-206, 8-207.
3. Building and Loan Associations. 8-318, 8-355.
6. Assessments and Fees. 8-601 to 8-603.
7. State-Federal Cooperation Acts; Capital Notes.
  - (a) Federal Banking Act of 1933. 8-701, 8-702.
  - (c) Federal Home Loan Bank Act. 8-716.
8. Personal Loans by Banks and Trust Companies. 8-815 to 8-828.
11. Securities Act of Nebraska. 8-1101 to 8-1123.
14. Disclosure of Confidential Information. 8-1401.
24. Credit Card Bank. 8-2401.
27. Nebraska Money Transmitters Act. 8-2727, 8-2733.

**ARTICLE 1**

**GENERAL PROVISIONS**

Section

- 8-101. Transferred to section 8-101.03.  
8-101.01. Transferred to section 8-101.02.  
8-101.02. Act, how cited.  
8-101.03. Terms, defined.  
8-102. Department of Banking and Finance; supervision and control of specified financial institutions; declaration of public purpose.  
8-103. Director; financial institutions; supervision and examination; director and department employees; prohibited acts; exception; penalty.  
8-104. Director; oath; bond or insurance.  
8-105. Deputies; counsels, examiners, and assistants; salaries; bond or insurance.  
8-106. Director; rules and regulations; standards.  
8-107. Banks; books and accounts; failure to keep; penalty.  
8-108. Director; financial institution examination; powers; procedure; charge.  
8-109. Financial institution examiner; failure to report unlawful conduct or unsafe condition; penalty.  
8-110. Banks; bonds; filing; approval; requirements; open to inspection.  
8-111. Director; real estate; power to convey; execution of conveyance.  
8-112. Director; records required; disclosures prohibited; confidential records.  
8-113. Unauthorized use of word bank or its derivatives; penalty.  
8-114. Banks; corporate status required; unlawful banking; penalty.  
8-116. Banks; capital stock; amount required.  
8-116.01. Banks; capital notes and debentures; issuance; conditions.  
8-117. Conditional bank charter; application; contents; hearing; notice; expenses; conversion to full bank charter; extension; written request; notice of expiration.  
8-118. Banks; unlawful promotion; sale of stock prior to issuance of charter; penalty.  
8-119. Capital stock; sale; compensation prohibited; false statement; penalties.  
8-120. Corporation; application to conduct, merge, or transfer bank; contents.  
8-121. Repealed. Laws 2017, LB140, § 163.  
8-122. Issuance of charter to transact business.  
8-124. Banks; board of directors; president; meetings; examination; audit.  
8-124.01. Banks; board of directors; vacancy; notice; filling; application for approval.  
8-125. Banks; board of directors; meetings; record; contents; publication.

## BANKS AND BANKING

- Section
- 8-126. Bank directors; qualifications; approval by department; revocation of approval; procedure.
- 8-127. List of stockholders; open to inspection; violation; penalty.
- 8-128. Capital stock; increase; decrease; notice; publication; denial by director, when.
- 8-129. Stockholders' meeting; director may call; notice; expense.
- 8-130. Federal reserve system; membership by state banks and trust companies authorized; examinations.
- 8-132. Banks; available funds; deficient reserve; impairment of capital; duty of bank; powers and duties of department; notice to bank.
- 8-133. Rate of interest; prohibited acts; penalties; pledge of letters of credit authorized.
- 8-135. Deposits; withdrawal methods authorized; lease of safe deposit box; section; how construed.
- 8-137. Checks; certification; requirements; effect.
- 8-138. Deposits; receiving when insolvent; prohibition; penalty.
- 8-139. Executive officers; approval of loans and investments; qualifications; license; revocation; violations; penalty; civil penalty; election to exempt active executive officers from license; procedure.
- 8-140. Mortgage loan originator; registration.
- 8-141. Loans; limits; exceptions.
- 8-143. Loans; excessive amount; violations; forfeiture of charter; directors' personal liability.
- 8-143.01. Extension of credit; limits; written report; credit report; violation; penalty; powers of director.
- 8-144. Loans or extension of credit; improper; willful and knowing violation; liability.
- 8-145. Loans; other improper solicitation or receipt of benefits; unlawful inducement; penalty.
- 8-147. Direct borrowing of bank; loans and investments; limitation on amounts; illegal transfer of assets; violation; penalty.
- 8-148. Banks; own capital stock; loans on, purchase, or use as collateral by bank prohibited; exceptions.
- 8-148.01. Corporation operating a computer center; investment of funds; limitation.
- 8-148.02. Banks; subscribe, invest, buy, and own stock; agricultural credit corporation; livestock loan company; limitation.
- 8-148.04. Community development investments; conditions.
- 8-148.05. Qualified Canadian Government obligations; investment.
- 8-148.07. Bank subsidiary corporation; authorized activities.
- 8-148.08. Bank subsidiary corporation; examination and regulation.
- 8-148.09. Bank; financial institution; merger, acquisition, or asset acquisition; transactions authorized.
- 8-150. Banks; real estate; power to acquire and convey; limitations and conditions.
- 8-151. Repealed. Laws 2017, LB140, § 163.
- 8-152. Banks; loans on real estate; authorized.
- 8-153. Checks; preprinted information; cleared at par; exception.
- 8-157. Branch banking; Director of Banking and Finance; powers.
- 8-157.01. Establishing financial institution; automatic teller machines; use; availability; user financial institution; switch; use and access; duties; department; enforcement action; limitation.
- 8-158. Banks; appointment as personal representative or special administrator; authorized.
- 8-160. Banks; trust department; amendment of charter; supervision.
- 8-161. Banks; trust department; application; investigation; authorization.
- 8-162.02. Bank; fiduciary account controlled by trust department; collateral; public funds exempt.
- 8-163. Dividends; withdrawal of capital or surplus prohibited; not made; when.
- 8-164. Dividends declared; conditions.
- 8-166. Banks; reports to department; form; number required; verification; waiver.
- 8-167. Banks; reports to department; contents; publication.
- 8-167.01. Banks; publication requirements not applicable; when.



## GENERAL PROVISIONS

- Section
- 8-168. Banks; special reports to director.
- 8-169. Banks; reports; published statements; failure to make; penalty, recovery.
- 8-170. Records and files; time required to be kept; destroy, when.
- 8-171. Records; destruction; liability; excuse for failure to produce.
- 8-173. Actions against bank on claims inconsistent with records; accrual of cause of action; limitations.
- 8-174. Records and files; destruction; applicable to national banks.
- 8-175. Banks; false entry or statement; other offenses relating to books and records; penalty.
- 8-177. Banks; consolidation; approval required; creditors' claims.
- 8-178. National bank; reorganization as state bank; authorization; vote required; trust company business; conversion; public hearing; when.
- 8-179. National bank; reorganization as state bank; procedure; trust company business; charter.
- 8-180. State bank; reorganization as national bank; vote required.
- 8-182. State bank; conversion, merger, or consolidation with a national bank; objecting stockholders; stock; payment.
- 8-183. National or state bank; conversion, merger, or consolidation; resulting bank; assets; valuation.
- 8-183.04. State or federal savings association; mutual savings association; retention of mutual form authorized.
- 8-183.05. State or federal savings association; issuance of state bank charter; effect; section, how construed.
- 8-184. Voluntary liquidation; approval required; examination; fees.
- 8-185. Voluntary liquidation; procedure.
- 8-186. Bank; possession; voluntary surrender to department; notice; posting; liens dissolved.
- 8-187. Banks; department may take possession; when; examination of affairs; liens dissolved; retention of possession.
- 8-188. Banks; possession by department; effective upon notice.
- 8-189. Banks; attempted prevention of possession by department; penalty.
- 8-190. Banks; possession by department; refusal to deliver; possession by banks; application for court order.
- 8-191. Banks; possession by department; notice to banks and trust companies; notice or knowledge of possession forestalls liens.
- 8-192. Banks; possession by department; inventory of assets and liabilities; filing.
- 8-193. Banks; redelivery of possession; bond; departmental supervision; repossession by department.
- 8-194. Insolvent banks; determination; declaration by director; filing.
- 8-195. Insolvent banks; possession by department; petition to enjoin; show cause order; findings by district court; disposition of case.
- 8-196. Insolvent banks; liquidation; injunction; appeal; bond.
- 8-197. Insolvent banks; liquidation by Federal Deposit Insurance Corporation or by liquidating trustees.
- 8-198. Financial institutions; designation of receiver and liquidating agent; department; powers.
- 8-199. Financial institutions; department as receiver; powers; no compensation to director.
- 8-1,100. Insolvent banks; liquidation; special deputies, assistants, counsel; appointment; compensation; discharge.
- 8-1,101. Insolvent banks; liquidation; special deputies, assistants; bond or insurance; conditions.
- 8-1,102. Insolvent banks; department as receiver and liquidating agent; liens dissolved; assets; transfers to defraud creditors; preferences.
- 8-1,103. Insolvent banks; liquidation; Director of Banking and Finance; powers.
- 8-1,104. Insolvent banks; liquidation; director; collection of debts; sale or compromise of certain debts; procedure; deposit or investment of funds.
- 8-1,105. Insolvent banks; reorganization or liquidation proceedings; district judge; jurisdiction.
- 8-1,106. Insolvent banks; claims; filing; time limit.

**§ 8-101****BANKS AND BANKING**

## Section

- 8-1,107. Insolvent banks; claims; listing and classification; notice to claimant; filing of objection; powers and duties of director.
- 8-1,108. Insolvent banks; claims; objections to classification; hearing.
- 8-1,109. Insolvent banks; claims; certificate of indebtedness; assignment; payments endorsed on certificate.
- 8-1,110. Insolvent banks; claims; priority.
- 8-1,111. Insolvent banks; priority; not affected by federal deposit insurance.
- 8-1,112. Insolvent banks; director; payment of dividends.
- 8-1,113. Insolvent banks; liquidation expenses; allocation; certification.
- 8-1,115. Insolvent banks; liquidation; reports to district court; dissolution of bank; cancellation of charter.
- 8-1,116. Insolvent banks; stockholders; restoration of solvency; conditions.
- 8-1,117. Banks; impaired capital; assessments on stock to restore; preferred stock excepted.
- 8-1,118. Insolvent banks; restoration of solvency; reopening for limited business; conditions; costs; new deposits treated as a trust fund; expenses.
- 8-1,119. Violations; general penalty.
- 8-1,120. Repealed. Laws 2017, LB140, § 163.
- 8-1,121. Repealed. Laws 2017, LB140, § 163.
- 8-1,124. Emergencies; terms, defined.
- 8-1,125. Emergencies; proclamation; director; effect; temporary office.
- 8-1,126. Emergencies; officers; powers.
- 8-1,127. Emergency; proclamation; President of United States; Governor; effect.
- 8-1,128. Emergency; closing; notice; contents.
- 8-1,129. Emergencies; laws applicable.
- 8-1,131. Retirement plan, medical savings account, or health savings account, investments; bank as trustee or custodian; powers and duties; account, how treated.
- 8-1,133. Bank; business of leasing personal property; subject to rules and regulations.
- 8-1,134. Violations; director; powers; fines; notice; hearing; closure; emergency powers; service; procedures.
- 8-1,135. Appeal; procedure.
- 8-1,136. Action to enjoin and enforce compliance.
- 8-1,137. Evidence of violation; refer to prosecuting attorney.
- 8-1,138. Violation of final order; liability; penalty.
- 8-1,139. Misapplication of funds or assets; penalty.
- 8-1,140. Federally chartered bank; bank organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

**8-101 Transferred to section 8-101.03.****8-101.01 Transferred to section 8-101.02.****8-101.02 Act, how cited.**

Sections 8-101.02 to 8-1,140 shall be known and may be cited as the Nebraska Banking Act.

**Source:** Laws 1998, LB 1321, § 32; Laws 1999, LB 396, § 4; Laws 2009, LB327, § 1; Laws 2010, LB891, § 1; R.S.1943, (2012), § 8-101.01; Laws 2017, LB140, § 1.

Operative date August 24, 2017.

**8-101.03 Terms, defined.**

For purposes of the Nebraska Banking Act, unless the context otherwise requires:

(1) Access device means a code, a transaction card, or any other means of access to a customer's account, or any combination thereof, that may be used

by a customer for the purpose of initiating an electronic funds transfer at an automatic teller machine or a point-of-sale terminal;

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

(3) Automatic teller machine means a machine established and located in the State of Nebraska, whether attended or unattended, which utilizes electronic, sound, or mechanical signals or impulses, or any combination thereof, and from which electronic funds transfers may be initiated and at which banking transactions as defined in section 8-157.01 may be conducted. An unattended automatic teller machine shall not be deemed to be a branch operated by a financial institution;

(4) Automatic teller machine surcharge means a fee that an operator of an automatic teller machine imposes upon a consumer for an electronic funds transfer, if such operator is not the financial institution that holds an account of such consumer from which the electronic funds transfer is to be made;

(5) Bank or banking corporation means any incorporated banking institution which was incorporated under the laws of this state as they existed prior to May 9, 1933, and any corporation duly organized under the laws of this state for the purpose of conducting a bank within this state under the act. Bank means any such banking institution which is, in addition to the exercise of other powers, following the practice of repaying deposits upon check, draft, or order and of making loans;

(6) Bank subsidiary corporation means a corporation which has a bank as a shareholder and which is organized for purposes of engaging in activities which are part of the business of banking or incidental to such business except for the receipt of deposits. A bank subsidiary corporation is not to be considered a branch of its bank shareholder;

(7) Capital or capital stock means capital stock;

(8) Data processing center means a facility, wherever located, at which electronic impulses or other indicia of a transaction originating at an automatic teller machine are received and either authorized or routed to a switch or other data processing center in order to enable the automatic teller machine to perform any function for which it is designed;

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

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

(11) Financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the United States, the department, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; or a trust company;

(12) Financial institution employees includes parent holding company and affiliate employees;

(13) Foreign state agency means any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any other state, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia;

(14) Impulse means an electronic, sound, or mechanical impulse, or any combination thereof;

(15) Insolvent means a condition in which (a) the actual cash market value of the assets of a bank is insufficient to pay its liabilities to its depositors, (b) a bank is unable to meet the demands of its creditors in the usual and customary manner, (c) a bank, after demand in writing by the director, fails to make good any deficiency in its reserves as required by law, or (d) the stockholders of a bank, after written demand by the director, fail to make good an impairment of its capital or surplus;

(16) Making loans includes advances or credits that are initiated by means of credit card or other transaction card. Transaction card and other transactions, including transactions made pursuant to prior agreements, may be brought about and transmitted by means of an electronic impulse. Such loan transactions including transactions made pursuant to prior agreements shall be subject to sections 8-815 to 8-829 and shall be deemed loans made at the place of business of the financial institution;

(17) Order includes orders transmitted by electronic transmission;

(18) Point-of-sale terminal means an information processing terminal which utilizes electronic, sound, or mechanical signals or impulses, or any combination thereof, which are transmitted to a financial institution or which are recorded for later transmission to effectuate electronic funds transfer transactions for the purchase or payment of goods and services and which are initiated by an access device. A point-of-sale terminal is not a branch operated by a financial institution. Any terminal owned or operated by a seller of goods and services shall be connected directly or indirectly to an acquiring financial institution; and

(19) Switch means any facility where electronic impulses or other indicia of a transaction originating at an automatic teller machine are received and are routed and transmitted to a financial institution or data processing center, wherever located. A switch may also be a data processing center.

**Source:** Laws 1963, c. 29, § 1, p. 134; Laws 1965, c. 27, § 1, p. 198; Laws 1967, c. 19, § 1, p. 117; Laws 1975, LB 269, § 1; Laws 1976, LB 561, § 1; Laws 1987, LB 615, § 1; Laws 1988, LB 375, § 1; Laws 1993, LB 81, § 1; Laws 1994, LB 611, § 1; Laws 1995, LB 384, § 1; Laws 1997, LB 137, § 1; Laws 1998, LB 1321, § 1; Laws 2000, LB 932, § 1; Laws 2002, LB 1089, § 1; Laws 2003, LB 131, § 1; Laws 2003, LB 217, § 1; Laws 2015, LB348, § 1; R.S. Supp.,2016, § 8-101; Laws 2017, LB140, § 2.

Operative date August 24, 2017.

**8-102 Department of Banking and Finance; supervision and control of specified financial institutions; declaration of public purpose.**

The department shall, under the laws of this state specifically made applicable to each, have general supervision and control over banks, trust companies, credit unions, building and loan associations, and savings and loan associations, all of which are hereby declared to be quasi-public in nature and subject to regulation and control by the state.

**Source:** Laws 1963, c. 29, § 2, p. 134; Laws 2002, LB 1094, § 1; Laws 2003, LB 131, § 2; Laws 2017, LB140, § 3.

Operative date August 24, 2017.

**8-103 Director; financial institutions; supervision and examination; director and department employees; prohibited acts; exception; penalty.**

(1)(a) The director shall have charge of and full supervision over the examination of banks and the enforcement of compliance with the statutes by banks and their holding companies in their business and functions and shall constructively aid and assist banks in maintaining proper banking standards and efficiency.

(b) The director shall also have charge of and full supervision over the examination of and the enforcement of compliance with the statutes by trust companies, building and loan associations, savings and loan associations, and credit unions in their business and functions and shall constructively aid and assist trust companies, building and loan associations, savings and loan associations, and credit unions in maintaining proper standards and efficiency.

(2) If the director is financially interested directly or indirectly in any financial institution chartered by the department, the financial institution shall be under the direct supervision of the Governor, and as to such financial institution, the Governor shall exercise all the supervisory powers otherwise vested in the director by the laws of this state, and reports of examination by state bank examiners, foreign state bank examiners, examiners of the Federal Reserve Board, examiners of the Office of the Comptroller of the Currency, examiners of the Federal Deposit Insurance Corporation, and examiners of the Consumer Financial Protection Bureau shall be transmitted to the Governor.

(3)(a) No person employed by the department shall borrow money from any financial institution chartered by the department, except that any such person may borrow money in the normal course of business from the Nebraska State Employees Credit Union. If the credit union is acquired by, or merged into, a Nebraska state-chartered credit union, persons employed by the department may borrow money in the normal course of business from the successor credit union.

(b) In the event a loan to a person employed by the department is sold or otherwise transferred to a financial institution chartered by the department, no violation of this section occurs if (i) such person did not solicit the sale or transfer of the loan and (ii) such person gives notice to the director of such sale or transfer. The director, in his or her discretion, may require such person to make all reasonable efforts to seek another lender.

(4) Any person who intentionally violates this section or who aids, abets, or assists in a violation of this section is guilty of a Class IV felony.

**Source:** Laws 1933, c. 18, § 2, p. 135; C.S.Supp.,1941, § 8-1,123; R.S. 1943, § 8-102; Laws 1963, c. 29, § 3, p. 135; Laws 1967, c. 20, § 1, p. 122; Laws 1985, LB 653, § 1; Laws 1988, LB 375, § 2; Laws 1996, LB 1053, § 1; Laws 2002, LB 1094, § 2; Laws 2003, LB 131, § 3; Laws 2013, LB213, § 1; Laws 2017, LB140, § 4. Operative date August 24, 2017.

**8-104 Director; oath; bond or insurance.**

The director shall, before assuming the duties of office, take and subscribe to the constitutional oath of office, file the oath in the office of the Secretary of State, and be bonded or insured as required by section 11-201.

**Source:** Laws 1933, c. 18, § 1, p. 134; Laws 1935, c. 12, § 1, p. 81; C.S.Supp.,1941, § 8-1,122; R.S.1943, § 8-101; Laws 1947, c. 16,

§ 2, p. 96; Laws 1947, c. 11, § 1, p. 75; Laws 1951, c. 303, § 1, p. 994; Laws 1957, c. 367, § 2, p. 1289; Laws 1959, c. 425, § 1, p. 1427; Laws 1961, c. 14, § 1, p. 106; R.R.S.1943, § 8-101; Laws 1963, c. 29, § 4, p. 135; Laws 1967, c. 20, § 2, p. 122; Laws 1978, LB 653, § 4; Laws 2004, LB 884, § 3; Laws 2017, LB140, § 5.  
Operative date August 24, 2017.

Cross References

For provisions of premium on bond of receiver, see section 25-21,218.  
For provisions relating to appointment of Director of Banking and Finance, see section 81-102.

**8-105 Deputies; counsels, examiners, and assistants; salaries; bond or insurance.**

(1) The director may employ such deputies, counsels, examiners, and other assistants as he or she may need to discharge in a proper manner the duties imposed upon him or her by law. The deputies, counsels, examiners, and other assistants shall perform such duties as are assigned to them. The employment of any person in the work of the department is subject to section 49-1499.07.

(2) Deputies and financial institution examiners shall hold office at the will of the director and shall receive such salary as set by the director and approved by the Governor based upon the level of credentials for the positions.

(3) The deputies, counsels, examiners, and other assistants, before assuming the duties of office, shall be bonded or insured as required by section 11-201.

**Source:** Laws 1933, c. 18, § 3, p. 135; Laws 1933, c. 19, § 3, p. 186; C.S.Supp.,1941, § 8-1,124; Laws 1943, c. 13, § 1, p. 77; R.S. 1943, § 8-103; Laws 1945, c. 238, § 19, p. 712; Laws 1947, c. 16, § 3, p. 97; Laws 1951, c. 311, § 1, p. 1065; Laws 1955, c. 9, § 1, p. 74; R.R.S.1943, § 8-103; Laws 1963, c. 29, § 5, p. 135; Laws 1973, LB 164, § 1; Laws 1978, LB 653, § 5; Laws 1996, LB 1053, § 2; Laws 2003, LB 85, § 1; Laws 2004, LB 884, § 4; Laws 2017, LB140, § 6.

Operative date August 24, 2017.

**8-106 Director; rules and regulations; standards.**

The director may adopt and promulgate rules and regulations for the governance of banks under his or her supervision as may in his or her judgment seem wise and expedient and which do not in any way conflict with any of the provisions of law. In adopting and promulgating such rules and regulations, the director shall consider generally recognized sound banking principles, the financial soundness of banks, competitive conditions, and general economic conditions.

**Source:** Laws 1923, c. 191, § 34, p. 457; C.S.1929, § 8-104; Laws 1933, c. 18, § 7, p. 137; C.S.Supp.,1941, § 8-104; R.S.1943, § 8-107; Laws 1963, c. 29, § 6, p. 136; Laws 2017, LB140, § 7.

Operative date August 24, 2017.

Cross References

For adoption and promulgation of administrative rules, Administrative Procedure Act, see section 84-920.

**8-107 Banks; books and accounts; failure to keep; penalty.**

The department has the authority to require the officers of any bank, or any of them, to open and keep such books or accounts as the department in its discretion may determine and prescribe for the purpose of keeping accurate and convenient records of the transactions and accounts of such bank. Any bank that refuses or neglects to open and keep such books or accounts as may be prescribed by the department shall be subject to a penalty of ten dollars for each day it neglects or fails to open and keep such books and accounts after receiving written notice from the department. Such penalty may be collected in the manner prescribed for the collection of fees for the examination of such bank.

**Source:** Laws 1923, c. 191, § 33, p. 456; C.S.1929, § 8-102; Laws 1933, c. 18, § 5, p. 136; C.S.Supp.,1941, § 8-102; R.S.1943, § 8-105; Laws 1963, c. 29, § 7, p. 136; Laws 2017, LB140, § 8.  
Operative date August 24, 2017.

**8-108 Director; financial institution examination; powers; procedure; charge.**

(1)(a) The director, his or her deputy, or any duly appointed examiner has the authority to make a thorough examination into all the books, papers, and affairs of any bank or other financial institution chartered by the department 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 financial 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 financial institution or its holding company, if any. The director, deputy, or examiner has 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 director may provide any examination or report to the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency.

(b) The director may accept any examination or report from a foreign state agency and may accept any examination or report from the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, or the Consumer Financial Protection Bureau in lieu of an examination or report required under the Nebraska Banking Act. Any such examination or report accepted by the director remains the property and confidential record of the foreign state agency or federal agency which provided the examination or report to the director. A request or subpoena for any such examination or report shall be directed to the foreign state agency or federal agency which provided the examination or report to the director.

(2) The department has the authority 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; Laws 2013, LB213, § 2; Laws 2017, LB140, § 9.  
Operative date August 24, 2017.

**8-109 Financial institution examiner; failure to report unlawful conduct or unsafe condition; penalty.**

If any financial institution examiner has knowledge of the insolvency or unsafe condition of any financial institution chartered by the department, that there are bad or doubtful assets in any such financial institution, that any such financial institution or any of its officers has violated any law governing the conduct of the financial institution, or that it is unsafe and inexpedient to permit any such financial institution to continue business, and the financial institution examiner fails to immediately report such fact in writing over his or her signature to the director, he or she is guilty of a Class II misdemeanor and shall forfeit his or her office.

**Source:** Laws 1923, c. 191, § 36, p. 457; Laws 1925, c. 30, § 8, p. 127; C.S.1929, § 8-110; Laws 1933, c. 18, § 9, p. 139; C.S.Supp.,1941, § 8-110; R.S.1943, § 8-108; Laws 1963, c. 29, § 9, p. 137; Laws 1977, LB 40, § 37; Laws 2017, LB140, § 10.  
Operative date August 24, 2017.

**8-110 Banks; bonds; filing; approval; requirements; open to inspection.**

The department shall require each bank to obtain a fidelity bond, naming the bank as obligee, in an amount to be fixed by the director. The bond shall be issued by an authorized insurer and shall be conditioned to protect and indemnify the bank from loss which it may sustain, of money or other personal property, including that for which the bank is responsible through or by reason of the fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, misapplication, misappropriation, or any other dishonest or criminal act of or by any of its officers or employees. Such bond may contain a deductible clause in an amount to be approved by the director. An executed copy of the bond shall be filed with and approved by the director and shall remain a part of the records of the department. The director may provide for such copies to be filed electronically. If the premium of the bond is not paid, the bond shall not be canceled or subject to cancellation unless at least ten days' advance notice, in writing, is filed with the department. No bond which is current with respect to premium payments shall be canceled or subject to cancellation unless at least forty-five days' advance notice, in writing, is filed with the department. The bond shall be open to public inspection during the office hours of the department. In the event a bond is canceled, the director may take whatever action he or she deems appropriate in connection with the continued operation of the bank involved.

**Source:** C.S.1929, § 8-103; Laws 1930, Spec. Sess., c. 6, § 13, p. 32; Laws 1933, c. 18, § 6, p. 137; C.S.Supp.,1941, § 8-103; R.S.1943, § 8-106; Laws 1963, c. 29, § 10, p. 138; Laws 1973, LB 164, § 2;



Laws 1979, LB 220, § 1; Laws 1985, LB 653, § 3; Laws 2017, LB140, § 11.

Operative date August 24, 2017.

**8-111 Director; real estate; power to convey; execution of conveyance.**

The director may convey any real estate title which is vested in the department by operation of law or otherwise. Such conveyance shall be signed by the director, sealed with the seal of the department, and acknowledged by the director.

**Source:** Laws 1925, c. 30, § 7, p. 127; Laws 1929, c. 38, § 20, p. 167; C.S.1929, § 8-112; Laws 1933, c. 18, § 10, p. 140; C.S.Supp.,1941, § 8-112; R.S.1943, § 8-109; Laws 1963, c. 29, § 11, p. 138; Laws 2017, LB140, § 12.

Operative date August 24, 2017.

**8-112 Director; records required; disclosures prohibited; confidential records.**

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

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

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

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

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

such reports or documents and information, unless the financial institution or other entity regulated by the department is already a party to the underlying proceeding or unless such notice is otherwise prohibited by law or by court order.

**Source:** Laws 1923, c. 191, § 35, p. 457; Laws 1929, c. 38, § 18, p. 166; C.S.1929, § 8-119; Laws 1933, c. 18, § 14, p. 142; C.S.Supp.,1941, § 8-119; R.S.1943, § 8-116; Laws 1963, c. 29, § 12, p. 138; Laws 1987, LB 2, § 1; Laws 1996, LB 1053, § 3; Laws 1997, LB 137, § 2; Laws 1999, LB 396, § 6; Laws 2009, LB327, § 3; Laws 2017, LB140, § 13.  
Operative date August 24, 2017.

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

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

(2) This section does not apply to:

(a) Banks, building and loan associations, savings and loan associations, or savings banks chartered and supervised by a foreign state agency;

(b) Bank holding companies registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative banc is used;

(c) Affiliates or subsidiaries of (i) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered and supervised by a foreign state agency, (ii) a building and loan association, savings and loan association, or savings bank organized under Chapter 8, article 3, or the authority of the federal government or chartered and supervised by a foreign state agency, or (iii) a bank holding company registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative banc is used;

(d) Organizations substantially owned by (i) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered and supervised by a foreign state agency, (ii) a building and loan association, savings and loan association, or savings bank organized under Chapter 8, article 3, or the authority of the federal government or chartered and supervised by a foreign state agency, (iii) a bank holding company registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative banc is used, or (iv) any combination of entities listed in subdivisions (i) through (iii) of this subdivision;

(e) Mortgage bankers licensed or registered under the Residential Mortgage Licensing Act, if the word mortgage immediately precedes the word bank or its derivative;

(f) Organizations which are described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01, which are exempt from taxation under section 501(a) of the code, and which are not providing or arranging for financial services subject to the authority of the department, a foreign state agency, or the federal government;

(g) Trade associations which are exempt from taxation under section 501(c)(6) of the code and which represent a segment of the banking or savings and loan industries, and any affiliate or subsidiary thereof;

(h) Firms, companies, corporations, or associations which sponsor incentive-based solid waste recycling programs that issue reward points or credits to persons for their participation therein; and

(i) Such other firms, companies, corporations, or associations as have been in existence and doing business prior to December 1, 1975, under a name composed in part of the word bank or some derivative thereof.

(3) This section does not apply to an individual, firm, company, corporation, or association doing business in Nebraska which uses the word bank or any derivative thereof as any part of a title or description of any business activity if such use is unlikely to mislead or confuse the public or give the impression that such individual, firm, company, corporation, or association is lawfully organized and operating 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.

(4) Any violation of this section is a Class V misdemeanor.

**Source:** Laws 1921, c. 297, § 1, p. 949; Laws 1921, c. 313, § 1, p. 1000; C.S.1922, § 7985; Laws 1929, c. 37, § 1, p. 155; C.S.1929, § 8-116; Laws 1933, c. 18, § 12, p. 141; C.S.Supp.,1941, § 8-116; R.S.1943, § 8-113; Laws 1963, c. 29, § 13, p. 139; Laws 1977, LB 40, § 38; Laws 1987, LB 2, § 2; Laws 1998, LB 1321, § 2; Laws 2004, LB 999, § 1; Laws 2005, LB 533, § 1; Laws 2007, LB124, § 2; Laws 2009, LB32, § 1; Laws 2009, LB328, § 1; Laws 2010, LB762, § 1; Laws 2017, LB140, § 14.  
Operative date August 24, 2017.

#### Cross References

**Residential Mortgage Licensing Act**, see section 45-701.

### **8-114 Banks; corporate status required; unlawful banking; penalty.**

(1) It is unlawful for any person to conduct a bank within this state except by means of a corporation duly organized for such purpose under the laws of this state. It is unlawful for any corporation to receive money upon deposit or conduct a bank under the laws of this state until such corporation has complied with all the provisions and requirements of the Nebraska Banking Act.

(2) Any violation of this section is a Class V misdemeanor for each day of the continuation of such offense and is cause for the appointment of a receiver as provided in the act to wind up such banking business.

**Source:** Laws 1909, c. 10, § 2, p. 66; R.S.1913, § 281; Laws 1919, c. 190, tit. V, art. XVI, § 3, p. 686; C.S.1922, § 7984; C.S.1929, § 8-115; R.S.1943, § 8-111; Laws 1963, c. 29, § 14, p. 139; Laws 1977, LB

40, § 39; Laws 1987, LB 2, § 3; Laws 1998, LB 1321, § 3; Laws 2017, LB140, § 15.

Operative date August 24, 2017.

**8-116 Banks; capital stock; amount required.**

(1) Except as provided in subsection (2) of this section, a charter for a bank shall not be issued unless the corporation applying therefor has surplus and paid-up capital stock in an amount not less than the amount necessary for compliance with subsection (1) of section 8-702 for the insurance of deposits.

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

**Source:** Laws 1909, c. 10, § 13, p. 72; R.S.1913, § 292; Laws 1919, c. 190, tit. V, art. XVI, § 11, p. 689; Laws 1921, c. 297, § 3, p. 950; C.S.1922, § 7992; Laws 1923, c. 192, § 1, p. 463; C.S.1929, § 8-122; Laws 1935, c. 19, § 1, p. 95; C.S.Supp.,1941, § 8-122; Laws 1943, c. 19, § 3(1), p. 102; R.S.1943, § 8-119; Laws 1959, c. 15, § 3, p. 132; Laws 1961, c. 15, § 1, p. 111; R.R.S.1943, § 8-119; Laws 1963, c. 29, § 16, p. 140; Laws 1967, c. 19, § 3, p. 118; Laws 1973, LB 164, § 4; Laws 1979, LB 220, § 3; Laws 1983, LB 252, § 2; Laws 2002, LB 1094, § 3; Laws 2008, LB851, § 2; Laws 2015, LB155, § 1; Laws 2017, LB140, § 16.

Operative date August 24, 2017.

**8-116.01 Banks; capital notes and debentures; issuance; conditions.**

With the approval of the director, any bank may at any time, through action of its board of directors and without requiring any action of its stockholders, issue and sell its capital notes or debentures. Such capital notes or debentures shall be subordinate and subject to the claims of depositors and may be subordinated and subjected to the claims of other creditors. Before any such capital notes or debentures are retired or paid by the bank, any existing deficiency of its capital, disregarding the notes or debentures to be retired, must be paid in, in cash, to the end that the sound capital assets shall at least equal the capital or capital stock of the bank. Such capital notes or debentures shall in no case be subject to any assessment. The holders of such capital notes or debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of such bank and shall not be held liable for assessments to restore impairments in the capital of such bank.

**Source:** Laws 1935, c. 8, § 11, p. 76; C.S.Supp.,1941, § 8-411; R.S.1943, § 8-710; Laws 1961, c. 14, § 9, p. 109; R.R.S.1943, § 8-710; Laws 1973, LB 164, § 5; Laws 2003, LB 217, § 3; Laws 2005, LB 533, § 3; Laws 2017, LB140, § 17.

Operative date August 24, 2017.

**8-117 Conditional bank charter; application; contents; hearing; notice; expenses; conversion to full bank charter; extension; written request; notice of expiration.**

(1)(a) The director may grant approval for a conditional bank charter which may remain inactive for an initial period of up to eighteen months.

(b) The purpose for which a conditional bank charter may be granted is limited to the acquisition or potential acquisition of a financial institution which (i) is located in this state or which has a branch in this state and (ii) has been determined to be troubled or failing by its primary state or federal regulator.

(2) A person or persons organizing for and desiring to obtain a conditional bank charter shall make, under oath, and transmit to the department an application prescribed by the department, to include, but not be limited to:

- (a) The name of the proposed bank;
- (b) A draft copy of the articles of incorporation of the proposed bank;
- (c) The names, addresses, financial condition, and business history of the proposed stockholders, officers, and directors of the proposed bank;
- (d) The sources and amounts of capital that would be available to the proposed bank; and
- (e) A preliminary business plan describing the operations of the proposed bank.

(3) Upon receipt of a substantially completed application for a conditional bank charter and payment of the fee required by section 8-602, the director may, in his or her discretion, hold a public hearing on the application. If a hearing is to be held, notice of the filing of the application and the date of hearing thereon shall be published by the department for three weeks in a minimum of two newspapers with general circulation in Nebraska. The newspapers shall be selected at the director's discretion, except that the director shall consider the county or counties of residence of the proposed members of the board of directors of the proposed conditional bank charter in making such selection. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing. Notice shall also be sent by first-class mail to the main office of all financial institutions doing business in the state. Electronic mail may be used if a financial institution agrees in advance to receive such notice by electronic mail.

(4) If the director determines that a hearing on the application for a conditional bank charter is not necessary, then the department shall publish a notice of the proposed application in a minimum of two newspapers of general circulation in Nebraska. The newspapers shall be selected in accordance with subsection (3) of this section. The department shall send notice of the application by first-class mail to the main office of all financial institutions doing business in the state. Electronic mail may be used if a financial institution agrees in advance to receive such notice by electronic mail. If the director receives a substantive objection to the application within fifteen days after the publication or notice, whichever occurs last, a hearing shall be scheduled on the application.

(5) The expense of any publication and mailing required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director.

(6) If the director upon investigation and after any public hearing on the application is satisfied that (a) the stockholders, officers, and directors of the proposed corporation applying for such conditional bank charter are parties of integrity and responsibility, (b) the applicant has sufficient sources and amounts of capital available to the proposed bank, and (c) the applicant has a

business plan describing the operations of the proposed bank that indicates the proposed bank has a reasonable probability of usefulness and success, the department shall, upon the payment of any required fees and costs, grant a conditional bank charter effective for a period not to exceed eighteen months from the date of issuance.

(7) A conditional bank charter may be converted to a full bank charter upon proof satisfactory to the director that:

(a) The financial institution to be acquired is in a troubled or failing status as required by subsection (1) of this section;

(b) The requirements of section 8-110 have been met;

(c) The requirements of section 8-702 have been met;

(d) Capital stock and surplus in amounts determined pursuant to section 8-116 have been paid in;

(e) The fees required by section 8-602 have been paid to the department; and

(f) Any other conditions imposed by the director have been complied with.

(8) A conditional bank charter may be extended for successive periods of one year if the holder of the charter files a written request for an extension of such charter at least ninety days prior to the expiration date of such charter. Such request shall be accompanied by (a) any information deemed necessary by the director to assure the department that the requirements of subsection (6) of this section continue to be met and (b) the fee required by section 8-602.

(9) The department shall issue a notice of expiration of a conditional bank charter if eighteen months have passed since the issuance of such charter and the holder of such charter (a) has not converted to a full bank charter pursuant to subsection (7) of this section, (b) has not made a request for an extension pursuant to subsection (8) of this section, or (c) has made a request for an extension pursuant to subsection (8) of this section which was not approved by the director.

**Source:** Laws 2010, LB891, § 2; Laws 2016, LB751, § 2; Laws 2017, LB140, § 18.

Operative date August 24, 2017.

**8-118 Banks; unlawful promotion; sale of stock prior to issuance of charter; penalty.**

(1) It shall be unlawful for any person for hire (a) to promote or attempt to promote the organization of a corporation to conduct the business of a bank in this state or (b) to sell the capital stock of such a corporation prior to the issuance of a charter to such corporation authorizing its operation as a bank.

(2) Any person violating the provisions of this section is guilty of a Class II misdemeanor.

**Source:** Laws 1909, c. 10, § 13, p. 72; R.S.1913, § 292; Laws 1919, c. 190, tit. V, art. XVI, § 11, p. 689; Laws 1921, c. 297, § 3, p. 950; C.S.1922, § 7992; Laws 1923, c. 192, § 1, p. 463; C.S.1929, § 8-122; Laws 1935, c. 19, § 1, p. 96; C.S.Supp.,1941, § 8-122; Laws 1943, c. 19, § 3(4), p. 103; R.S.1943, § 8-122; Laws 1959, c. 15, § 6, p. 134; R.R.S.1943, § 8-122; Laws 1963, c. 29, § 18, p.

141; Laws 1967, c. 19, § 5, p. 119; Laws 1973, LB 164, § 6; Laws 1977, LB 40, § 40; Laws 2017, LB140, § 19.  
Operative date August 24, 2017.

**8-119 Capital stock; sale; compensation prohibited; false statement; penalties.**

No corporation organized for the purpose of conducting a bank under the laws of this state shall be granted the charter provided in section 8-122 until the corporation has filed with the department a statement, under oath, of the president or cashier of such corporation that no premium, bonus, commission, compensation, reward, salary, or other form of remuneration has been paid, or promised to be paid, to any person for selling the stock of such corporation. The president or cashier of any such corporation who shall be found guilty of filing a false statement under the provisions of this section is guilty of a Class I misdemeanor. If, after such charter has been delivered, the director determines, after a public hearing, that such statement is false, the department shall cancel such charter, and a receiver shall be appointed for such corporation in the manner provided for in case of a corporation which is conducting a bank in an unsafe or unauthorized manner.

**Source:** Laws 1919, c. 190, tit. V, art. XVI, § 54, p. 708; C.S.1922, § 8034; C.S.1929, § 8-128; R.S.1943, § 8-130; Laws 1963, c. 29, § 19, p. 141; Laws 1967, c. 19, § 5, p. 119; Laws 1973, LB 164, § 7; Laws 1977, LB 40, § 41; Laws 2017, LB140, § 20.  
Operative date August 24, 2017.

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

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

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

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

**Source:** Laws 1909, c. 10, § 15, p. 74; R.S.1913, § 294; Laws 1919, c. 190, tit. V, art. XVI, § 15, p. 691; Laws 1921, c. 313, § 1, p. 1001; C.S.1922, § 7996; C.S.1929, § 8-126; Laws 1933, c. 18, § 17, p. 143; C.S.Supp.,1941, § 8-126; R.S.1943, § 8-128; Laws 1959, c. 15, § 9, p. 135; R.R.S.1943, § 8-128; Laws 1963, c. 29, § 20, p.

142; Laws 1967, c. 19, § 7, p. 120; Laws 1980, LB 916, § 1; Laws 2002, LB 957, § 2; Laws 2005, LB 533, § 4; Laws 2008, LB851, § 3; Laws 2017, LB140, § 21.  
Operative date August 24, 2017.

**8-121 Repealed. Laws 2017, LB140, § 163.**

Operative date August 24, 2017.

**8-122 Issuance of charter to transact business.**

(1) After the examination and approval by the Director of Banking and Finance of the application required by section 8-120, if the director upon investigation and after any public hearing on the application held pursuant to section 8-115.01 shall be satisfied that the stockholders, directors, and officers of the corporation applying for such charter are parties of integrity and responsibility, that the requirements of section 8-702 have been met, and that the public necessity, convenience, and advantage will be promoted by permitting such corporation to engage in business as a bank, the department shall, upon the payment of the required fees, and, upon the filing with the department of a statement, under oath, of the president, secretary, or treasurer, that the paid-up capital stock and surplus have been paid in, as determined by the Director of Banking and Finance in accordance with section 8-116, issue to such corporation a charter to transact the business of a bank in this state provided for in its articles of incorporation. In the case of a bank organized to merge with an existing bank, there shall be a rebuttable presumption that the public necessity, convenience, and advantage will be met by the merger of the two banks, except that such presumption shall not apply when the new bank that is formed by the merger is at a different location than that of the former existing bank. Any application for merger under this subsection shall be subject to section 8-1516.

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

**Source:** Laws 1909, c. 10, § 16, p. 74; Laws 1911, c. 8, § 1, p. 79; R.S.1913, § 295; Laws 1919, c. 190, tit. V, art. XVI, § 16, p. 692; Laws 1921, c. 302, § 2, p. 958; C.S.1922, § 7997; C.S.1929, § 8-127; R.S.1943, § 8-129; Laws 1947, c. 12, § 1, p. 77; Laws 1957, c. 10, § 1, p. 128; R.R.S.1943, § 8-129; Laws 1963, c. 29, § 22, p. 142; Laws 1967, c. 19, § 9, p. 120; Laws 1980, LB 916, § 2; Laws 1983, LB 252, § 3; Laws 1996, LB 1275, § 2; Laws 2002, LB 957, § 3; Laws 2002, LB 1094, § 4; Laws 2008, LB851, § 4; Laws 2017, LB140, § 22.

Operative date August 24, 2017.

**8-124 Banks; board of directors; president; meetings; examination; audit.**

(1) The affairs and business of any bank shall be managed or controlled by a board of directors of not less than five and not more than twenty-five 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. The board of directors shall select a president. No person shall act as president if he or she is not a member of the board of directors.



(2) 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; Laws 2017, LB140, § 23.

Operative date August 24, 2017.

**8-124.01 Banks; board of directors; vacancy; notice; filling; application for approval.**

At any time that a vacancy on the board of directors of a bank occurs, the bank shall, within thirty days, notify the department of the vacancy. Vacancies 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. When the vacancy has been filled, the bank shall make application to the department for approval of the director appointed in accordance with section 8-126.

**Source:** Laws 1973, LB 164, § 10; Laws 1995, LB 599, § 1; Laws 2017, LB140, § 24.

Operative date August 24, 2017.

**8-125 Banks; board of directors; meetings; record; contents; publication.**

A full and complete record of the proceedings and business of all meetings of the board of directors shall be recorded in the bank's minutes. Such record of the meetings shall show the gross earnings and disposition thereof by indicating expenses and taxes paid, worthless items charged off, depreciation in assets, amount carried to surplus fund, and amount of dividend, and shall also indicate the amount of undivided profits remaining. Published statements of assets and liabilities shall show for undivided profits only the net amount after deducting all expenses.

**Source:** Laws 1923, c. 191, § 37, p. 458; C.S.1929, § 8-139; R.S.1943, § 8-141; Laws 1963, c. 29, § 25, p. 144; Laws 2017, LB140, § 25.

Operative date August 24, 2017.

**8-126 Bank directors; qualifications; approval by department; revocation of approval; procedure.**

(1) A majority of the members of the board of directors of any bank shall have their residences in this state or within twenty-five miles of the main office of the bank. Reasonable efforts shall be made to acquire members of such board of

directors from the county in which the main office of such bank is located and from counties in which branches of such bank are located.

(2) Directors of banks shall be persons of good moral character, known integrity, business experience, and responsibility. No person shall act as a member of the board of directors of any bank until such bank applies for and obtains approval from the department.

(3) If the department, upon investigation, determines that any director of a bank is conducting the business of the bank in an unsafe or unauthorized manner or is endangering the interests of the stockholders or depositors, the Director of Banking and Finance has the authority, following notice and opportunity for hearing, to revoke such approval to act as a member of the board of directors.

(4) The Director of Banking and Finance may adopt and promulgate rules and regulations and prescribe forms to carry out this section.

**Source:** Laws 1909, c. 10, § 12, p. 71; R.S.1913, § 291; Laws 1919, c. 190, tit. V, art. XVI, § 10, p. 689; Laws 1921, c. 313, § 1, p. 1001; C.S.1922, § 7991; C.S.1929, § 8-121; Laws 1935, c. 7, § 1, p. 70; C.S.Supp.,1941, § 8-121; R.S.1943, § 8-118; Laws 1959, c. 15, § 2, p. 132; R.R.S.1943, § 8-118; Laws 1963, c. 29, § 26, p. 144; Laws 1973, LB 164, § 11; Laws 1986, LB 1035, § 1; Laws 1987, LB 2, § 7; Laws 1988, LB 996, § 1; Laws 1989, LB 322, § 1; Laws 1993, LB 81, § 2; Laws 1997, LB 137, § 3; Laws 1998, LB 1321, § 7; Laws 2017, LB140, § 26.

Operative date August 24, 2017.

#### **8-127 List of stockholders; open to inspection; violation; penalty.**

(1) Every bank shall cause to be kept at all times a full and correct list of the names and residences of all its stockholders, the number of shares held by each, and the amount of paid-up capital represented thereby. Such list shall be subject to the inspection of all stockholders of the bank during all business hours, and shall be kept in the business office where all stockholders may have ready access to it.

(2) Any person violating this section is guilty of a Class III misdemeanor.

**Source:** Laws 1909, c. 10, § 38, p. 85; R.S.1913, § 317; Laws 1919, c. 190, tit. V, art. XVI, § 38, p. 701; C.S.1922, § 8018; C.S.1929, § 8-157; R.S.1943, § 8-162; Laws 1963, c. 29, § 27, p. 145; Laws 1977, LB 40, § 42; Laws 2017, LB140, § 27.

Operative date August 24, 2017.

#### **8-128 Capital stock; increase; decrease; notice; publication; denial by director, when.**

The paid-in capital stock of any bank may be increased or decreased in the following manner: The stockholders at any regular meeting or at any special meeting duly called for such purpose shall by vote of those owning two-thirds of the capital stock authorize an officer of the bank to notify the department of the proposed increase or reduction of paid-in capital stock, and a notice containing a statement of the amount of any proposed reduction of paid-in capital stock shall be published for two weeks in some newspaper published and of general circulation in the county where the main office of such bank is located.

Reduction of paid-in capital stock shall be discretionary with the director, but shall be denied if granting the same would reduce the paid-in capital stock below the requirements of the Nebraska Banking Act or would impair the security of the depositors. The bank shall notify the department when the proposed increase or decrease of the paid-in capital stock has been consummated.

**Source:** Laws 1909, c. 10, § 34, p. 82; R.S.1913, § 313; Laws 1919, c. 190, tit. V, art. XVI, § 34, p. 699; C.S.1922, § 8014; C.S.1929, § 8-153; Laws 1933, c. 18, § 34, p. 152; C.S.Supp.,1941, § 8-153; R.S. 1943, § 8-157; Laws 1961, c. 15, § 7, p. 113; R.R.S.1943, § 8-157; Laws 1963, c. 29, § 28, p. 145; Laws 1987, LB 2, § 8; Laws 1998, LB 1321, § 8; Laws 2015, LB155, § 2; Laws 2017, LB140, § 28. Operative date August 24, 2017.

**8-129 Stockholders' meeting; director may call; notice; expense.**

Whenever the director deems it expedient, he or she may call a meeting of the stockholders of any bank by sending notice of such meeting to each stockholder five days previous thereto. All necessary expenses incurred in the giving of such notice shall be borne by the bank whose stockholders are required to convene.

**Source:** Laws 1933, c. 18, § 41, p. 157; C.S.Supp.,1941, § 8-1,126; R.S. 1943, § 8-1,106; Laws 1963, c. 29, § 29, p. 146; Laws 2017, LB140, § 29. Operative date August 24, 2017.

**8-130 Federal reserve system; membership by state banks and trust companies authorized; examinations.**

Any bank or trust company, organized under the laws of this state, may subscribe to the capital stock of the Federal Reserve Bank of Kansas City, Missouri, and become a member of the federal reserve system created and organized under an act of Congress of the United States, approved December 23, 1913, and known as the Federal Reserve Act, and may assume such liabilities and exercise such powers as a member of such system as are prescribed by the provisions of such act, or amendments thereto. So long as such bank or trust company shall remain a member of such system, it shall be subject to examination by the legally constituted authorities, and to all provisions of such Federal Reserve Act and regulations made pursuant thereto by the Federal Reserve Board which are applicable to such bank or trust company as a member of the federal reserve system. The director may, in his or her discretion, accept examinations and audits made under the provisions of the Federal Reserve Act in lieu of examinations required of banks or trust companies organized under the laws of this state.

**Source:** Laws 1915, c. 175, § 1, p. 359; Laws 1919, c. 190, tit. V, art. XVI, § 65, p. 711; C.S.1922, § 8045; C.S.1929, § 8-163; R.S.1943, § 8-166; Laws 1963, c. 29, § 30, p. 146; Laws 2017, LB140, § 30. Operative date August 24, 2017.

**8-132 Banks; available funds; deficient reserve; impairment of capital; duty of bank; powers and duties of department; notice to bank.**

(1) The available funds of a bank shall consist of cash on hand and balances due from other solvent banks. Cash shall include lawful money of the United States and exchange for any clearinghouse association. Whenever the available funds or any reserve of any bank are deemed deficient by the director, such bank shall not make any new loans or discount otherwise than by discounting or purchasing bills of exchange payable at sight or make any dividends of its profits until it has on hand available funds and reserve deemed sufficient for operation by the director. The department shall notify any bank, in case its available funds or reserves are deemed deficient or its capital is impaired, to make good such available funds, reserves, or capital within such time as the director may direct, and any failure of such bank to make good any deficiency in the amount of its available funds, reserve, or capital within the time directed shall be cause for the department to take possession of such bank, declare it insolvent, and liquidate it as provided in the Nebraska Banking Act.

(2) The capital of any bank shall be deemed to be unimpaired when the amount of capital notes and debentures as represented by cash or sound assets exceeds an impairment as found by the department.

**Source:** Laws 1909, c. 10, § 23, p. 77; R.S.1913, § 302; Laws 1919, c. 190, tit. V, art. XVI, § 23, p. 695; C.S.1922, § 8004; C.S.1929, § 8-135; Laws 1933, c. 18, § 24, p. 147; C.S.Supp.,1941, § 8-135; R.S. 1943, § 8-137; R.R.S.1943, § 8-137; Laws 1963, c. 29, § 32, p. 147; Laws 1965, c. 28, § 1, p. 200; Laws 1987, LB 2, § 9; Laws 1998, LB 1321, § 9; Laws 2003, LB 217, § 4; Laws 2017, LB140, § 31.

Operative date August 24, 2017.

**8-133 Rate of interest; prohibited acts; penalties; pledge of letters of credit authorized.**

(1)(a) Except as provided in this section, a bank may pay interest at any rate on any deposits made or retained in the bank.

(b) A bank shall not pay to any officer, director, principal stockholder, or employee a greater rate of interest on the deposits of such officer, director, principal stockholder, or employee than that paid to other depositors on similar deposits with such bank. Any person who causes the payment of a greater rate of interest on such deposits is guilty of a Class IV felony. Any officer, director, principal stockholder, or employee who requests or receives a greater rate of interest on his or her deposits than that paid to other depositors on similar deposits with such bank is guilty of a Class IV felony.

(2) Any officer, director, principal stockholder, or employee of a bank or any other person who, directly or indirectly, and either personally or for the bank, pledges any assets of the bank, except as provided in this section or otherwise by law, for making or retaining a deposit in the bank is guilty of a Class IV felony. Any depositor who accepts any such pledge of assets is guilty of a Class IV felony. Deposits made in violation of this section are not entitled to priority of payment from the assets of the bank.

(3) A bank may secure deposits made by a trustee under 11 U.S.C. 101 et seq. by pledge of the assets of the bank or by furnishing a surety bond as provided in 11 U.S.C. 345.

(4) A bank may secure deposits made by the United States Secretary of the Interior on behalf of any individual Indian or any Indian tribe under 25 U.S.C.

162a by a pledge of the assets of the bank or by furnishing an acceptable bond as provided in 25 U.S.C. 162a.

(5) A bank may secure deposits by a pledge of the assets of the bank or by furnishing an acceptable bond as provided in the Public Funds Deposit Security Act.

(6) Nothing in this section shall prohibit a bank or any officer, director, stockholder, or employee thereof from providing to a depositor a guaranty bond which provides coverage for the deposits of the depositor which are in excess of the amounts insured by the Federal Deposit Insurance Corporation.

(7) Nothing in this section shall prohibit a bank or any officer, director, stockholder, or employee thereof from providing to a depositor an irrevocable, nontransferable, unconditional standby letter of credit issued by the Federal Home Loan Bank of Topeka which provides coverage for the deposits of the depositor which are in excess of the amounts insured by the Federal Deposit Insurance Corporation.

(8) For purposes of this section, principal stockholder means a person owning ten percent or more of the voting shares of the bank.

**Source:** Laws 1909, c. 10, § 27, p. 79; Laws 1911, c. 8, § 27, p. 81; R.S.1913, § 306; Laws 1919, c. 190, tit. V, art. XVI, § 27, p. 696; Laws 1921, c. 313, § 1, p. 1001; C.S.1922, § 8008; Laws 1925, c. 28, § 1, p. 119; C.S.1929, § 8-140; Laws 1930, Spec. Sess., c. 6, § 8, p. 30; Laws 1933, c. 18, § 26, p. 148; C.S.Supp.,1941, § 8-140; R.S.1943, § 8-142; Laws 1959, c. 15, § 12, p. 136; R.R.S.1943, § 8-142; Laws 1963, c. 29, § 33, p. 147; Laws 1977, LB 40, § 43; Laws 1978, LB 966, § 1; Laws 1980, LB 966, § 1; Laws 1990, LB 956, § 1; Laws 1994, LB 979, § 1; Laws 1996, LB 1053, § 4; Laws 2003, LB 217, § 5; Laws 2009, LB74, § 1; Laws 2017, LB140, § 32.

Operative date August 24, 2017.

#### Cross References

Public Funds Deposit Security Act, see section 77-2386.

### **8-135 Deposits; withdrawal methods authorized; lease of safe deposit box; section; how construed.**

(1) All persons, regardless of age, may become depositors in any bank and shall be subject to the same duties and liabilities respecting their deposits. Whenever a deposit is accepted by any bank in the name of any person, regardless of age, the deposit may be withdrawn by the depositor by any of the following methods:

(a) Check or other instrument in writing. The check or other instrument in writing constitutes a receipt or acquittance if the check or other instrument in writing is signed by the depositor and constitutes a valid release and discharge to the bank for all payments so made; or

(b) Electronic means through:

(i) Preauthorized direct withdrawal;

(ii) An automatic teller machine;

(iii) A debit card;

(iv) A transfer by telephone;

(v) A network, including the Internet; or

(vi) Any electronic terminal, computer, magnetic tape, or other electronic means.

(2) All persons, individually or with others and regardless of age, may enter into an agreement with a bank for the lease of a safe deposit box and shall be bound by the terms of the agreement.

(3) This section shall not be construed to affect the rights, liabilities, or responsibilities of participants in an electronic fund transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., as the act existed on January 1, 2017, and shall not affect the legal relationships between a minor and any person other than the bank.

**Source:** Laws 1963, c. 27, § 1, p. 132; Laws 1963, c. 29, § 35, p. 148; Laws 2005, LB 533, § 6; Laws 2013, LB213, § 3; Laws 2016, LB760, § 1; Laws 2017, LB140, § 33.  
Operative date August 24, 2017.

#### **8-137 Checks; certification; requirements; effect.**

No officer or employee of any bank shall certify any check drawn upon such bank unless the person, firm, or corporation drawing the check has on deposit with the bank at the time such check is certified an amount of credit, on the depositors' ledger of such bank, subject to the payment of such check, equal to the amount specified in such check. The amount of such check shall not be recoverable from the payee or holder except in case of fraud. Whenever a check drawn upon any bank is certified by any officer or employee of such bank, the amount of the check shall be immediately charged against the account of the person, firm, or corporation drawing the check.

**Source:** Laws 1909, c. 10, § 39, p. 85; R.S.1913, § 318; Laws 1919, c. 190, tit. V, art. XVI, § 39, p. 701; C.S.1922, § 8019; C.S.1929, § 8-158; R.S.1943, § 8-163; Laws 1963, c. 29, § 37, p. 149; Laws 2017, LB140, § 34.  
Operative date August 24, 2017.

#### **8-138 Deposits; receiving when insolvent; prohibition; penalty.**

No bank shall accept or receive on deposit for any purpose any money, bank bills, United States treasury notes or currency, or other notes, bills, checks, drafts, credits, or currency, when such bank is insolvent. If any bank receives or accepts on deposit any such deposits when such bank is insolvent, the officer, agent, or employee knowingly receiving or accepting or being accessory to, permitting, or conniving at the receiving or accepting on deposit of such bank any such deposit, is guilty of a Class III felony.

**Source:** Laws 1909, c. 10, § 30, p. 80; R.S.1913, § 309; Laws 1919, c. 190, tit. V, art. XVI, § 30, p. 697; C.S.1922, § 8010; C.S.1929, § 8-147; R.S.1943, § 8-147; Laws 1963, c. 29, § 38, p. 149; Laws 1977, LB 40, § 44; Laws 2017, LB140, § 35.  
Operative date August 24, 2017.

**8-139 Executive officers; approval of loans and investments; qualifications; license; revocation; violations; penalty; civil penalty; election to exempt active executive officers from license; procedure.**

(1) No loan or investment shall be made by a bank, directly or indirectly, without the approval of an active executive officer.

(2) Executive officers of banks shall be persons of good moral character, known integrity, business experience and responsibility, and be capable of conducting the affairs of a bank on sound banking principles.

(3) Except as provided in subsection (6) of this section, no person shall act as an active executive officer of any bank until such bank has applied for and obtained from the department a license for such person to act as an active executive officer. If the director, upon investigation, is satisfied that any active executive officer of a bank is conducting the business of the bank in an unsafe or unauthorized manner or is endangering the interests of the stockholders or depositors of the bank, the department may revoke the license of such active executive officer or suspend the ability of such active executive officer to continue to act as an active executive officer.

(4) Any person (a) whose license has been revoked or whose authority has been suspended by the department under subsection (3) of this section or who lacks a license and on whose behalf no election was made under subsection (6) of this section and (b) who acts or attempts to act as an active executive officer of a bank is guilty of a Class III felony.

(5) As part of any order of revocation or suspension under subsection (3) of this section, the director may levy a civil penalty against the active executive officer personally in an amount not to exceed ten thousand dollars. The civil penalty shall not be paid out of the assets of the bank in which the active executive officer is employed or otherwise performing services pursuant to contract. The department shall remit the civil penalty collected to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. Any person whose authority has been revoked or suspended with prejudice under this section shall not be eligible to act as an executive officer at any other bank without authorization to do so from the department.

(6) A bank has the right, on or after August 24, 2017, to elect for its active executive officers to be exempt from the requirement to apply for and obtain a license from the department. An election, once made, shall remain in effect with respect to all active executive officers of the bank until and unless the election is revoked by the bank. An election or revocation shall be made in a form and manner established by the department. Within thirty days after revoking such election, such bank shall apply for and obtain from the department a license for any person acting or desiring to act as an active executive officer of the bank.

(7) For purposes of this section, active executive officer means any employee of a bank or any person under contract to perform services for a bank who is determined by the department to be a policy-dominant individual in the bank or who exercises (a) management functions, (b) major policymaking functions, or (c) substantial employee supervision, including the power to terminate employment. An active executive officer includes, but is not limited to, a president, a vice-president, a cashier, an assistant cashier, a chief executive officer, a loan officer, or an investment officer.

(8) The director may adopt and promulgate rules and regulations and prescribe forms to be used to carry out the intent of this section.

**Source:** Laws 1921, c. 297, § 7, p. 952; C.S.1922, § 8048; C.S.1929, § 8-166; Laws 1933, c. 18, § 38, p. 154; C.S.Supp.,1941, § 8-166; R.S.1943, § 8-169; Laws 1963, c. 29, § 39, p. 150; Laws 1977, LB 40, § 45; Laws 2017, LB140, § 36.  
Operative date August 24, 2017.

#### **8-140 Mortgage loan originator; registration.**

Any financial institution chartered by the department that employs a mortgage loan originator, as defined in section 45-702, shall register such employee with the Nationwide Mortgage Licensing System and Registry, as defined in section 45-702, by furnishing the following information concerning the employee's identity to the Nationwide Mortgage Licensing System and Registry:

- (1) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information, for a state and national criminal history background check; and
- (2) Personal history and experience, including authorization for the Nationwide Mortgage Licensing System and Registry to obtain information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

**Source:** Laws 2017, LB140, § 37.  
Operative date August 24, 2017.

#### **8-141 Loans; limits; exceptions.**

(1) No bank shall directly or indirectly loan to any single corporation, limited liability company, firm, or individual, including in such loans all loans made to the several members or shareholders of such corporation, limited liability company, or firm, for the use and benefit of such corporation, limited liability company, firm, or individual, more than twenty-five percent of the paid-up capital, surplus, and capital notes and debentures or fifteen percent of the unimpaired capital and unimpaired surplus of such bank, whichever is greater. Such limitations shall be subject to the following exceptions:

(a) Obligations of any person, partnership, limited liability company, association, or corporation in the form of notes or drafts secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock, when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen percent of the face amount of the notes covered by such documents, shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus;

(b) Obligations of any person, partnership, limited liability company, association, or corporation secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917, or certificates of indebtedness of the United States, treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States shall be subject under this section to a limitation of ten percent of such capital, surplus,



and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus;

(c) Obligations of any person, partnership, limited liability company, association, or corporation which are secured by negotiable warehouse receipts in an amount not less than one hundred fifteen percent of the face amount of the note or notes secured by such documents shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus; or

(d) Obligations of any person, partnership, limited liability company, association, or corporation which are secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, in an amount at least equal to the face amount of the note or notes secured by such collateral, shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus.

(2)(a) For purposes of this section, the discounting of bills of exchange, drawn in good faith against actually existing values, and the discounting of commercial paper actually owned by the persons negotiating the bills of exchange or commercial paper shall not be considered as the lending of money.

(b) Loans or obligations shall not be subject to any limitation under this section, based upon such capital and surplus or such unimpaired capital and unimpaired surplus, to the extent that such capital and surplus or such unimpaired capital and unimpaired surplus are secured or covered by guaranties, or by commitments or agreements to take over or to purchase such capital and surplus or such unimpaired capital and unimpaired surplus, made by any federal reserve bank or by the United States Government or any authorized agency thereof, including any corporation wholly owned directly or indirectly by the United States, or general obligations of any state of the United States or any political subdivision of the state. The phrase general obligation of any state or any political subdivision of the state means an obligation supported by the full faith and credit of an obligor possessing general powers of taxation, including property taxation, but does not include municipal revenue bonds and sanitary and improvement district warrants which are subject to the limitations set forth in this section.

(c) Any bank may subscribe to, invest in, purchase, and own single-family mortgages secured by the Federal Housing Administration or the United States Department of Veterans Affairs and mortgage-backed certificates of the Government National Mortgage Association which are guaranteed as to payment of principal and interest by the Government National Mortgage Association. Such mortgages and certificates shall not be subject under this section to any limitation based upon such capital and surplus or such unimpaired capital and unimpaired surplus.

(d) Obligations representing loans to any national banking association or to any banking institution organized under the laws of any state, when such loans are approved by the director by rule and regulation or otherwise, shall not be subject under this section to any limitation based upon such capital and surplus or such unimpaired capital and unimpaired surplus.

(e) Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject under this section to any limitation based on such capital and surplus or such unimpaired capital and unimpaired surplus. The director may adopt and promulgate rules and regulations governing the terms and conditions of such security interest and segregated deposit account.

(f) For the purpose of determining lending limits, partnerships shall not be treated as separate entities. Each individual shall be charged with his or her personal debt plus the debt of every partnership in which he or she is a partner, except that for purposes of this section (a) an individual shall only be charged with the debt of any limited partnership in which he or she is a partner to the extent that the terms of the limited partnership agreement provide that such individual is to be held liable for the debts or actions of such limited partnership and (b) no individual shall be charged with the debt of any general partnership in which he or she is a partner beyond the extent to which (i) his or her liability for such partnership debt is limited by the terms of a contract or other written agreement between the bank and such individual and (ii) any personal debt of such individual is incurred for the use and benefit of such general partnership.

(3) A loan made within lending limits at the initial time the loan was made may be renewed, extended, or serviced without regard to changes in the lending limit of a bank following the initial extension of the loan if (a) the renewal, extension, or servicing of the loan does not result in the extension of funds beyond the initial amount of the loan or (b) the accrued interest on the loan is not added to the original amount of the loan in the process of renewal, extension, or servicing.

(4) Any bank may purchase or take an interest in life insurance contracts for any purpose incidental to the business of banking. A bank's purchase of any life insurance contract, as measured by its cash surrender value, from any one life insurance company shall not at any time exceed twenty-five percent of the paid-up capital, surplus, and capital notes and debentures of such bank or fifteen percent of the unimpaired capital and unimpaired surplus of such bank, whichever is greater. A bank's purchase of life insurance contracts, as measured by their cash surrender values, in the aggregate from all life insurance companies shall not at any time exceed thirty-five percent of the paid-up capital, surplus, undivided profits, and capital notes and debentures of such bank. The limitations under this subsection on a bank's purchase of life insurance contracts, in the aggregate from all life insurance companies, shall not apply to any contract purchased prior to April 5, 1994.

(5) On and after January 21, 2013, the director has the authority to determine the manner and extent to which credit exposure resulting from derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions, and securities borrowing transactions shall be taken into account for purposes of determining compliance with this section. In making

such determinations, the director may, but is not required to, act by rule and regulation or order.

(6) For purposes of this section:

(a) Derivative transaction means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets;

(b) Loan includes:

(i) All direct and indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of that person;

(ii) To the extent specified by rule and regulation or order of the director, any liability of a state bank to advance funds to or on behalf of a person pursuant to a contractual commitment; and

(iii) Any credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the bank and the person; and

(c) Unimpaired capital and unimpaired surplus means (i) the bank's tier 1 and tier 2 capital included in the bank's risk-based capital under the capital guidelines of the appropriate federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3), and (ii) the balance of the bank's allowance for loan and lease losses not included in the bank's tier 2 capital for purposes of the calculation of risk-based capital by the appropriate federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3). Notwithstanding the provisions of section 8-1,140, the director may, by order, deny or limit the inclusion of goodwill in the calculation of a bank's unimpaired capital and unimpaired surplus or in the calculation of a bank's paid-up capital and surplus.

**Source:** Laws 1909, c. 10, § 33, p. 81; R.S.1913, § 312; Laws 1919, c. 190, tit. V, art. XVI, § 33, p. 698; Laws 1921, c. 313, § 1, p. 1002; C.S.1922, § 8013; Laws 1923, c. 191, § 45, p. 461; C.S.1929, § 8-150; Laws 1933, c. 18, § 33, p. 151; C.S.Supp.,1941, § 8-150; Laws 1943, c. 9, § 1(1), p. 67; R.S.1943, § 8-150; Laws 1959, c. 15, § 14, p. 137; R.R.S.1943, § 8-150; Laws 1963, c. 29, § 41, p. 151; Laws 1965, c. 28, § 3, p. 201; Laws 1969, c. 35, § 1, p. 241; Laws 1972, LB 1151, § 1; Laws 1973, LB 164, § 13; Laws 1986, LB 983, § 2; Laws 1987, LB 753, § 1; Laws 1988, LB 788, § 1; Laws 1990, LB 956, § 2; Laws 1993, LB 81, § 3; Laws 1993, LB 121, § 87; Laws 1994, LB 979, § 2; Laws 1999, LB 396, § 7; Laws 2006, LB 876, § 8; Laws 2012, LB963, § 1; Laws 2017, LB140, § 38.

Operative date August 24, 2017.

**8-143 Loans; excessive amount; violations; forfeiture of charter; directors' personal liability.**

If the directors of any bank knowingly violate or knowingly permit any of the officers, employees, or agents of the bank to violate section 8-141, all rights, privileges, and franchises of the bank shall be forfeited. Before the charter of the bank is declared forfeited, the violation shall be determined and adjudged by a court of competent jurisdiction in an action brought for that purpose by the Director of Banking and Finance in his or her own name. In case of such violation, every director of the bank who participated in or knowingly assented to the violation or permission to violate section 8-141 shall be liable in his or her personal and individual capacity for all damages which the bank, its shareholders, or any other person has sustained in consequence of such violation.

**Source:** Laws 1923, c. 191, § 45, p. 461; C.S.1929, § 8-150; Laws 1933, c. 18, § 33, p. 152; C.S.Supp.,1941, § 8-150; Laws 1943, c. 9, § 1(3), p. 68; R.S.1943, § 8-152; Laws 1959, c. 15, § 15, p. 138; R.R.S. 1943, § 8-152; Laws 1963, c. 29, § 43, p. 152; Laws 2010, LB890, § 3; Laws 2017, LB140, § 39.  
Operative date August 24, 2017.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) For purposes of this section:

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

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

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

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

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

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

(10) The Director of Banking and Finance may adopt and promulgate rules and regulations to carry out this section, including rules and regulations defining or further defining terms used in this section, consistent with the provisions of 12 U.S.C. 84 and implementing Regulation O as such section and regulation existed on January 1, 2017.

**Source:** Laws 1994, LB 611, § 2; Laws 1997, LB 137, § 4; Laws 1999, LB 396, § 8; Laws 2001, LB 53, § 1; Laws 2005, LB 533, § 7; Laws 2008, LB851, § 5; Laws 2017, LB140, § 40.

Operative date August 24, 2017.

**8-144 Loans or extension of credit; improper; willful and knowing violation; liability.**

Any officer or employee of any bank who willfully and knowingly violates any provision of sections 8-141 to 8-143.01 shall be liable under his or her bond for any loss to the bank resulting therefrom.

**Source:** Laws 1909, c. 10, § 40, p. 86; R.S.1913, § 319; Laws 1919, c. 190, tit. V, art. XVI, § 40, p. 701; C.S.1922, § 8020; C.S.1929, § 8-159; R.S.1943, § 8-153; Laws 1963, c. 29, § 44, p. 152; Laws 1994, LB 611, § 3; Laws 2017, LB140, § 41.

Operative date August 24, 2017.

**8-145 Loans; other improper solicitation or receipt of benefits; unlawful inducement; penalty.**

Any stockholder or director, officer, agent, or employee of any bank who, for the use or benefit of himself or herself or any person other than the bank,

solicits, asks for, or receives or agrees to receive from any person any gift or compensation or reward or inducement of any kind for (1) procuring or endeavoring to procure any loan from such bank to any person, (2) procuring or endeavoring to procure the purchase by such bank from any person of any negotiable or nonnegotiable instrument of any kind by discount or otherwise, (3) procuring or endeavoring to procure the purchase by such bank from any person of any real or personal property of any kind, or (4) procuring or endeavoring to procure such bank to permit any person to overdraw his or her account with such bank, is guilty of a Class I misdemeanor.

**Source:** Laws 1923, c. 191, § 40, p. 458; C.S.1929, § 8-151; R.S.1943, § 8-154; Laws 1963, c. 29, § 45, p. 152; Laws 1977, LB 40, § 48; Laws 2017, LB140, § 42.

Operative date August 24, 2017.

**8-147 Direct borrowing of bank; loans and investments; limitation on amounts; illegal transfer of assets; violation; penalty.**

(1) The aggregate amount of direct borrowing of any bank shall at no time exceed the amount of its paid-up capital, surplus, undivided profits, capital reserves, capital notes, and debentures, except with the prior written permission of the director. Direct borrowing does not include:

(a) Money borrowed on the bank's bills payable secured by (i) direct or indirect obligations of the United States Government or (ii) obligations guaranteed by agencies of the United States Government;

(b) Rediscounts, bills payable, borrowings, or other liabilities with or to the federal reserve system or the federal reserve banks, if the bank is a member of the federal reserve system;

(c) Rediscounts, bills payable, borrowings, or other liabilities with or to the Federal Home Loan Bank System or the Federal Home Loan Banks, if the bank is a member of the Federal Home Loan Bank System; or

(d) Rediscounts, bills payable, borrowings, or other liabilities with or to the federal intermediate credit banks.

(2) The aggregate amount of the loans and investments of any bank shall at no time exceed fifteen times the amount of its paid-up capital, surplus, undivided profits, capital reserves, capital notes, and debentures. For purposes of this section, loans and investments shall not include a bank's (a) cash reserves, (b) real estate and buildings at which the bank is authorized to conduct its business, (c) furniture and fixtures, and (d) obligations set forth in subdivisions (1)(a), (b), and (c) of this section.

(3) Any bank becoming a member of the federal reserve system or the Federal Home Loan Bank System shall have the same privileges to the same extent as national banks.

(4) With the prior written permission of the director, a bank may rediscount paper in an amount in excess of its paid-up capital stock.

(5) Any transfer of assets of a bank in violation of this section is void as against the creditors of the bank.

(6) Any officer, director, or employee of a bank who does, or permits to be done, any act in violation of this section and any other person who knowingly assists in the violation of this section is guilty of a Class IV felony.

**Source:** Laws 1909, c. 10, § 24, p. 78; R.S.1913, § 303; Laws 1919, c. 190, tit. V, art. XVI, § 24, p. 695; Laws 1922, Spec. Sess., c. 6, § 1, p. 66; C.S.1922, § 8005; Laws 1923, c. 190, § 1, p. 435; C.S.1929, § 8-136; Laws 1933, c. 18, § 25, p. 147; C.S.Supp.,1941, § 8-136; R.S.1943, § 8-138; Laws 1945, c. 8, § 1, p. 105; Laws 1959, c. 15, § 11, p. 136; R.R.S.1943, § 8-138; Laws 1963, c. 29, § 47, p. 153; Laws 1969, c. 36, § 1, p. 243; Laws 1973, LB 143, § 1; Laws 1977, LB 40, § 49; Laws 1982, LB 779, § 1; Laws 1983, LB 177, § 1; Laws 1994, LB 979, § 3; Laws 1996, LB 1053, § 5; Laws 1997, LB 2, § 1; Laws 2017, LB140, § 43.  
Operative date August 24, 2017.

**8-148 Banks; own capital stock; loans on, purchase, or use as collateral by bank prohibited; exceptions.**

(1) Except as provided in subsection (2) or (3) of this section, a bank shall not make any loan or discount on the security of the shares of its own capital stock or the capital stock of its holding company, if any, be the purchaser or holder of any such shares, or purchase any securities convertible into stock or, except as provided in this section and sections 8-148.01, 8-148.02, 8-148.04, 8-148.06, 8-149, and 21-2109, the shares of any corporation, unless such security or purchase is necessary to prevent loss upon a debt previously contracted in good faith. Such stock so purchased or acquired shall, within six months after the time of its purchase unless written approval of a longer holding period is obtained from the director, be sold or disposed of at public or private sale, or in default thereof, a receiver may be appointed to close up the business of the bank, except that such stock, if shares of another bank or a bank holding company, shall be sold or disposed of as required by the director. In no case shall the amount of stock so held at any one time exceed ten percent of the paid-up capital of such bank.

(2) Any bank may subscribe to, invest, purchase, and own shares of investment companies registered under the Investment Company Act of 1940 when the investment companies' assets consist of and are limited to obligations that are eligible for investment by the bank. The director may adopt and promulgate rules and regulations governing the amounts, terms, and conditions of such subscriptions, investments, purchases, and ownership.

(3) Any bank may subscribe to, invest, purchase, and own Student Loan Marketing Association stock, Government National Mortgage Association stock, Federal National Mortgage Association stock, Federal Agricultural Mortgage Corporation stock, Federal Home Loan Mortgage Corporation stock, or stock issued by any authorized agency of the United States Government, including any corporation or enterprise wholly owned directly or indirectly by the United States, or with the authority to borrow directly from the United States treasury, which the director has approved by rule and regulation or order. The director may adopt and promulgate rules and regulations governing the amounts, terms, and conditions of such subscriptions, investments, purchases, and ownerships,



except that a bank shall not obligate more than five percent of its capital, surplus, undivided profits, and unencumbered reserves for such stock.

**Source:** Laws 1909, c. 10, § 25, p. 78; R.S.1913, § 304; Laws 1919, c. 190, tit. V, art. XVI, § 25, p. 695; C.S.1922, § 8006; C.S.1929, § 8-137; R.S.1943, § 8-139; Laws 1963, c. 29, § 48, p. 154; Laws 1973, LB 164, § 14; Laws 1985, LB 165, § 1; Laws 1987, LB 532, § 1; Laws 1987, LB 453, § 2; Laws 1987, LB 237, § 1; Laws 1988, LB 996, § 2; Laws 1993, LB 81, § 4; Laws 2003, LB 217, § 6; Laws 2005, LB 533, § 8; Laws 2017, LB140, § 44.  
Operative date August 24, 2017.

**8-148.01 Corporation operating a computer center; investment of funds; limitation.**

Any bank may invest not more than ten percent of its capital and surplus either in stock of a corporation operating a computer center or directly, alone or with others, in a computer center. With written approval of the director, such additional percentage of its capital and surplus may be so invested as the director shall approve. Such investment is not subject to the provisions of sections 8-148, 8-149, and 8-150.

**Source:** Laws 1967, c. 18, § 1, p. 116; Laws 1993, LB 81, § 5; Laws 2017, LB140, § 45.  
Operative date August 24, 2017.

**8-148.02 Banks; subscribe, invest, buy, and own stock; agricultural credit corporation; livestock loan company; limitation.**

Any bank may subscribe to, invest, buy, and own stock in any agricultural credit corporation or livestock loan company, or its affiliate, the principal business of which corporation must be the extension of short and intermediate term credit to farmers and ranchers, including partnerships, limited liability companies, and corporations engaged in farming and ranching, for agricultural purposes, including the breeding, raising, fattening, or marketing of livestock. The bank shall not obligate more than thirty-five percent of its paid-up capital, surplus, undivided profits, capital reserves, capital notes, and debentures for such purposes, except that if the bank owns at least eighty percent of the voting stock of such agricultural credit corporation or livestock loan company, the limitation on the amount of obligation for such purposes shall not apply. Such subscription, investment, possession, or ownership is not subject to the provisions of sections 8-148, 8-149, and 8-150.

**Source:** Laws 1969, c. 30, § 1, p. 235; Laws 1971, LB 720, § 1; Laws 1974, LB 845, § 1; Laws 1982, LB 779, § 2; Laws 1993, LB 121, § 88; Laws 2017, LB140, § 46.  
Operative date August 24, 2017.

**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 director must be obtained.

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

(3) The subscription, investment, possession, or ownership is not 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; Laws 2017, LB140, § 47.

Operative date August 24, 2017.

#### **8-148.05 Qualified Canadian Government obligations; investment.**

(1) Any bank may deal in, underwrite, and purchase for its own account qualified Canadian Government obligations to the same extent that such bank may deal in, underwrite, and purchase for its own account obligations of the United States Government or general obligations of any state thereof.

(2) For purposes of this section:

(a) Qualified Canadian Government obligation means any debt obligation which is backed by Canada or any Canadian province to a degree which is comparable to the liability of the United States Government or any state thereof for any obligation which is backed by the full faith and credit of the United States Government or any state thereof. Qualified Canadian Government obligations also includes any debt obligation of any agent of Canada or any Canadian province if:

(i) The obligation of the agent is assumed in such agent's capacity as agent for Canada or any Canadian province; and

(ii) Canada or any Canadian province, on whose behalf such agent is acting with respect to such obligation, is ultimately and unconditionally liable for such obligation; and

(b) The term Canadian province means a province of Canada and includes the Yukon Territory and the Northwest Territories and their successors.

**Source:** Laws 1993, LB 423, § 1; Laws 2017, LB140, § 48.

Operative date August 24, 2017.

#### **8-148.07 Bank subsidiary corporation; authorized activities.**

A bank subsidiary corporation shall engage in only those activities prescribed under subdivision (6) of section 8-101.03 or that its bank shareholder or shareholders are authorized to perform under the laws of this state and shall engage in those activities only at locations in this state where the bank shareholder or shareholders could be authorized to perform activities.

**Source:** Laws 1995, LB 384, § 3; Laws 2000, LB 932, § 2; Laws 2017, LB140, § 49.

Operative date August 24, 2017.

**8-148.08 Bank subsidiary corporation; examination and regulation.**

A bank subsidiary corporation is subject to examination and regulation by the department to the same extent as its bank shareholder or shareholders.

**Source:** Laws 1995, LB 384, § 4; Laws 2017, LB140, § 50.  
Operative date August 24, 2017.

**8-148.09 Bank; financial institution; merger, acquisition, or asset acquisition; transactions authorized.**

(1) Any bank may subscribe to, invest, buy, and own stock of another financial institution if the transaction is part of the merger or consolidation of the other financial institution with the acquiring bank, or the acquisition of substantially all of the assets of the other financial institution by the acquiring bank, and if:

(a) The merger, consolidation, or asset acquisition occurs on the same day as the acquisition of the shares of the other financial institution and the other financial institution will not be operated by the acquiring bank as a separate entity; and

(b) The transaction receives the prior approval of the director.

(2) Any bank may subscribe to, invest, buy, and own stock of a company controlling another financial institution if the transaction is part of (a) the merger or consolidation of the company controlling the other financial institution with the company controlling the acquiring bank, or the acquisition of substantially all of the assets of the company controlling the other financial institution by the company controlling the acquiring bank, and (b) the merger or consolidation of the other financial institution with the acquiring bank, or the acquisition of substantially all of the assets of the other financial institution by the acquiring bank, and if:

(i) The merger, consolidation, or asset acquisition occurs on the same day as the acquisition of the shares of the company controlling the other financial institution, and neither the company controlling the other financial institution nor the other financial institution will be operated by the acquiring bank as a separate entity; and

(ii) The transaction receives the prior approval of the director.

(3) Any bank that acquires stock of another financial institution or company controlling another financial institution pursuant to this section shall not be deemed to be a bank holding company for purposes of the Nebraska Bank Holding Company Act of 1995, so long as the conditions of subdivision (1)(a) or (2)(b)(i) of this section, as applicable, are satisfied.

(4) For purposes of this section, financial institution means a bank, savings bank, credit card bank, savings and loan association, building and loan association, trust company, or credit union organized under the laws of any state or organized under the laws of the United States.

**Source:** Laws 2017, LB140, § 51.  
Operative date August 24, 2017.

**8-150 Banks; real estate; power to acquire and convey; limitations and conditions.**

(1) Any bank may purchase, hold, and convey real estate that is (a) acquired pursuant to section 8-149, (b) conveyed to it for debts due the bank, or (c) purchased at sale under judgments, decrees, deeds of trust, or mortgages held by the bank or purchased to secure debts due to it upon its securities, but the bank at such sale shall not bid a larger amount than required to satisfy such judgments or decrees with costs. Real estate acquired in satisfaction of debts or at a sale upon judgments, decrees, deeds of trust, or mortgages shall be sold at private or public sale within five years unless authority shall be given in writing by the director to hold it for a longer period.

(2) The total amount of real estate held by any bank for purposes of subdivisions (1)(b) and (c) of this section shall not be entered on the records of the bank as an asset at a value greater than (a) the unpaid balance of the debts due the bank plus its out-of-pocket expenses incurred in acquiring clear title, (b) its judgments or decrees with costs, or (c) the appraised value of such real estate, whichever is less, except that a bank may expend funds as necessary for repairs or to complete a project in order to market such property.

(3) A bank may utilize property acquired by it under subdivisions (1)(b) and (c) of this section in any manner authorized by the director.

**Source:** Laws 1909, c. 10, § 29, p. 80; R.S.1913, § 308; Laws 1919, c. 190, tit. V, art. XVI, § 29, p. 697; C.S.1922, § 8009-a; Laws 1925, c. 30, § 10, p. 128; C.S.1929, § 8-145; Laws 1933, c. 18, § 29, p. 149; C.S.Supp.,1941, § 8-145; R.S.1943, § 8-145; Laws 1959, c. 15, § 13, p. 137; R.R.S.1943, § 8-145; Laws 1963, c. 29, § 50, p. 155; Laws 1985, LB 653, § 5; Laws 2017, LB140, § 52.  
Operative date August 24, 2017.

**8-151 Repealed. Laws 2017, LB140, § 163.**

Operative date August 24, 2017.

**8-152 Banks; loans on real estate; authorized.**

A bank may make loans secured by real estate or may participate with other financial institutions in such loans whether such participation occurs at the inception of the loan or at any time after the loan was made.

**Source:** Laws 1963, c. 29, § 52, p. 156; Laws 1965, c. 28, § 4, p. 202; Laws 1972, LB 1226, § 1; Laws 1973, LB 164, § 16; Laws 1974, LB 845, § 2; Laws 1979, LB 220, § 6; Laws 1982, LB 779, § 3; Laws 1994, LB 979, § 5; Laws 2017, LB140, § 53.  
Operative date August 24, 2017.

**8-153 Checks; preprinted information; cleared at par; exception.**

All checks, unless sent to banks as special collection items, shall have preprinted the magnetically encoded routing and transit symbol of the bank and either the name of the maker or the magnetically encoded account number of the maker. Except for checks sent to banks as special collection items or checks presented for payment by the payee in person, all checks drawn on any bank shall be cleared at par by the bank on which they are drawn. The term at par applies only to the settlement of checks between collecting and paying or remitting banks and does not apply to or prohibit a bank from deducting a fee

from the face amount of the check for paying the check if the check is presented to the bank by the payee in person.

**Source:** Laws 1945, c. 11, § 1, p. 110; R.R.S.1943, § 8-163.01; Laws 1963, c. 29, § 53, p. 157; Laws 1979, LB 269, § 1; Laws 2015, LB155, § 3; Laws 2017, LB140, § 54.  
Operative date August 24, 2017.

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

(1) Except as otherwise provided in this section and section 8-2103, the general business of every bank shall be transacted at the place of business specified in its charter.

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

(ii) Any bank that owns or controls more than twenty-two percent of the total deposits in Nebraska, as described in subdivision (2)(c) of section 8-910 and computed in accordance with subsection (3) of section 8-910, or any bank that is a subsidiary of a bank holding company that owns or controls more than twenty-two percent of the total deposits in Nebraska, as described in subdivision (2)(c) of section 8-910 and computed in accordance with subsection (3) of section 8-910, shall not establish and maintain an unlimited number of branches as provided in subdivision (2)(a)(i) of this section. With the approval of the director, a bank as described in this subdivision may establish and maintain in the county in which the main office of such bank is located an unlimited number of branches at which all banking transactions allowed by law may be made, except that if the main office of such bank is located in a Class I or Class III county, such bank may establish and maintain in Class I and Class III counties an unlimited number of branches at which all banking transactions allowed by law may be made.

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

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

(c) For purposes of this subsection:

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

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

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

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

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

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

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

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

(7) A bank which has a main chartered office or an approved branch located in the State of Nebraska may, through any of its executive officers, including executive officers licensed as such pursuant to section 8-139, or designated agents, conduct a loan closing at a location other than the place of business specified in the bank's charter or any branch thereof.

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

(9) Upon receiving an application for a branch to be established pursuant to subdivision (2)(a) of this section, to establish a mobile branch pursuant to subdivision (2)(b) of this section, to acquire a branch of another financial institution pursuant to subsection (4) of this section, to establish or acquire a branch pursuant to subsection (1) of section 8-2103, or to move the location of an established branch other than a move made pursuant to subdivision (6) of section 8-115.01, the director shall hold a public hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant bank warrants a hearing. If the director determines that the condition of the bank does not warrant a hearing, the director shall publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed branch or mobile branch would be located, the expense of which shall be paid by the applicant bank. If the director receives any substantive objection to the proposed branch or mobile branch within fifteen days after

publication of such notice, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subsection shall be published for two consecutive weeks in a newspaper of general circulation in the county where the proposed branch or mobile branch would be located. The date for hearing the application shall not be more than ninety days after the filing of the application and not less than thirty days after the last publication of notice of hearing. The expense of any publication required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director.

**Source:** Laws 1927, c. 33, § 1, p. 153; C.S.1929, § 8-1,118; R.S.1943, § 8-1,105; Laws 1959, c. 17, § 1, p. 141; R.R.S.1943, § 8-1,105; Laws 1963, c. 29, § 57, p. 158; Laws 1973, LB 312, § 1; Laws 1975, LB 269, § 2; Laws 1977, LB 77, § 1; Laws 1983, LB 58, § 1; Laws 1983, LB 252, § 4; Laws 1984, LB 1026, § 1; Laws 1985, LB 295, § 1; Laws 1985, LB 625, § 1; Laws 1986, LB 983, § 3; Laws 1987, LB 615, § 2; Laws 1988, LB 703, § 1; Laws 1989, LB 272, § 1; Laws 1990, LB 956, § 4; Laws 1991, LB 190, § 1; Laws 1991, LB 782, § 1; Laws 1992, LB 470, § 1; Laws 1992, LB 757, § 3; Laws 1993, LB 81, § 7; Laws 1995, LB 456, § 1; Laws 1995, LB 599, § 2; Laws 1996, LB 1275, § 3; Laws 1997, LB 56, § 1; Laws 1997, LB 136, § 1; Laws 1997, LB 137, § 6; Laws 1997, LB 351, § 9; Laws 2002, LB 957, § 4; Laws 2002, LB 1089, § 2; Laws 2002, LB 1094, § 5; Laws 2003, LB 217, § 7; Laws 2005, LB 533, § 9; Laws 2008, LB851, § 6; Laws 2010, LB890, § 4; Laws 2012, LB963, § 2; Laws 2016, LB742, § 2; Laws 2016, LB751, § 3; Laws 2017, LB140, § 55.  
Operative date August 24, 2017.

**8-157.01 Establishing financial institution; automatic teller machines; use; availability; user financial institution; switch; use and access; duties; department; enforcement action; limitation.**

(1) Any establishing financial institution may establish and maintain any number of automatic teller machines at which all banking transactions, defined as receiving deposits of every kind and nature and crediting such to customer accounts, cashing checks and cash withdrawals, transferring funds from checking accounts to savings accounts, transferring funds from savings accounts to checking accounts, transferring funds from either checking accounts and savings accounts to accounts of other customers, transferring payments from customer accounts into accounts maintained by other customers of the financial institution or the financial institution, including preauthorized draft authority, preauthorized loans, and credit transactions, receiving payments payable at the financial institution or otherwise, account balance inquiry, and any other transaction incidental to the business of the financial institution or which will provide a benefit to the financial institution's customers or the general public, may be conducted. Any automatic teller machine owned by a nonfinancial institution third party shall be sponsored by an establishing financial institution. Neither such automatic teller machines nor the transactions conducted thereat shall be construed as the establishment of a branch or as branch banking.

(2) Any financial institution may become a user financial institution by agreeing to pay the establishing financial institution the automatic teller ma-

chine usage fee. Such agreement shall be implied by the use of such automatic teller machines.

(3)(a) Beginning November 1, 2016, (i) all automatic teller machines shall be made available on a nondiscriminating basis for use by Nebraska customers of a user financial institution and (ii) all Nebraska automatic teller machine transactions initiated by Nebraska customers of a user financial institution shall be made on a nondiscriminating basis.

(b) It shall not be deemed discrimination if (i) an automatic teller machine does not offer the same transaction services as other automatic teller machines, (ii) there are no automatic teller machine usage fees charged between affiliate financial institutions for the use of automatic teller machines, (iii) the automatic teller machine usage fees of an establishing financial institution that authorizes and directly or indirectly routes Nebraska automatic teller machine transactions to multiple switches, all of which comply with the requirements of subdivision (3)(d) of this section, differ solely upon the fact that the automatic teller machine usage fee schedules of such switches differ from one another, (iv) automatic teller machine usage fees differ based upon whether the transaction initiated at an automatic teller machine is subject to a surcharge or provided on a surcharge-free basis, (v) the manner in which an establishing financial institution authorizes and directly or indirectly routes Nebraska automatic teller machine transactions results in the same automatic teller machine usage fees for all user financial institutions for essentially the same service routed over the same switch, or (vi) the automatic teller machines established or sponsored by an establishing financial institution are made available for use by Nebraska customers of any user financial institution which agrees to pay the automatic teller machine usage fee and which conforms to the operating rules and technical standards established by the switch to which a Nebraska automatic teller machine transaction is directly or indirectly routed.

(c) The director, upon notice and after a hearing, may terminate or suspend the use of any automatic teller machine if he or she determines that the automatic teller machine is not made available on a nondiscriminating basis or that Nebraska automatic teller machine transactions initiated at such automatic teller machine are not made on a nondiscriminating basis.

(d) A switch (i) shall provide to all financial institutions that have a main office or approved branch located in the State of Nebraska and that conform to the operating rules and technical standards established by the switch an equal opportunity to participate in the switch for the use of and access thereto; (ii) shall implement the same automatic teller machine usage fee for all user financial institutions for essentially the same service; (iii) shall be capable of operating to accept and route Nebraska automatic teller machine transactions, whether receiving data from an automatic teller machine, an establishing financial institution, or a data processing center; and (iv) shall be capable of being directly or indirectly connected to every data processing center for any automatic teller machine.

(e) The director, upon notice and after a hearing, may terminate or suspend the operation of any switch with respect to all Nebraska automatic teller machine transactions if he or she determines that the switch is not being operated in the manner required under subdivision (3)(d) of this section.



(f) Subject to the requirement for a financial institution to comply with this subsection, no user financial institution or establishing financial institution shall be required to become a member of any particular switch.

(4) Any consumer initiating an electronic funds transfer at an automatic teller machine for which an automatic teller machine surcharge will be imposed shall receive notice in accordance with the provisions of 15 U.S.C. 1693b(d)(3)(A) and (B), as such section existed on January 1, 2017. Such notice shall appear on the screen of the automatic teller machine or appear on a paper notice issued from such machine after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(5) A point-of-sale terminal may be established at any point within this state by a financial institution, a group of two or more financial institutions, or a combination of a financial institution or financial institutions and a third party or parties. Such parties may contract with a seller of goods and services or any other third party for the operation of point-of-sale terminals.

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

(7) Nothing in this section shall be construed to prohibit nonbank employees from assisting in transactions originated at automatic teller machines or point-of-sale terminals, and such assistance shall not be deemed to be engaging in the business of banking.

(8)(a) Beginning September 1, 2015, and thereafter annually by September 1, any entity operating as a switch in Nebraska prior to September 1, 2015, regardless of whether the switch had been approved by the department, shall file a notice with the department setting forth its name, address, and contact information for an officer authorized to answer inquiries related to its operations in Nebraska.

(b) On or after September 1, 2015, any entity intending to operate in Nebraska as a switch shall file a notice with the department setting forth its name, address, and contact information for an officer authorized to answer inquiries related to its operations in Nebraska. Such notice shall be filed at least thirty days prior to the date on which the switch commences operations, and thereafter annually by September 1.

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

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

purposes of determining (a) if an automatic teller machine has been made available or Nebraska automatic teller machine transactions have been made on a nondiscriminating basis for use by Nebraska customers of a user financial institution or (b) if a switch complies with subdivision (3)(d) of this section.

(11) An agreement to operate or share an automatic teller machine may not prohibit, limit, or restrict the right of the operator or owner of the automatic teller machine to charge a customer conducting a transaction using an account from a foreign financial institution an access fee or surcharge not otherwise prohibited under state or federal law.

(12) Switch fees shall not be subject to this section or be regulated by the department.

(13) Nothing in this section shall prevent a group of two or more credit unions, each of which has a main chartered office or an approved branch located in the State of Nebraska, from participating in a credit union service organization organized on or before January 1, 2015, for the purpose of owning automatic teller machines, provided that all participating credit unions have an ownership interest in the credit union service organization and that the credit union service organization has an ownership interest in each of the participating credit unions' automatic teller machines. Such participation and any automatic teller machine usage fees associated with Nebraska automatic teller machine transactions initiated by customers of participating credit unions at such automatic teller machines shall not be considered for purposes of determining if such automatic teller machines have been made available on a nondiscriminating basis or if Nebraska automatic teller machine transactions initiated at such automatic teller machines have been made on a nondiscriminating basis, provided that all Nebraska automatic teller machine transactions initiated by customers of participating credit unions result in the same automatic teller machine usage fees for essentially the same service routed over the same switch.

(14)(a) Except for any violation of this subsection, the department shall take no enforcement action under this section between May 14, 2015, and November 1, 2016, with respect to access to automatic teller machines, Nebraska automatic teller machine usage fees, or any agreements relating to Nebraska automatic teller machine usage fees which existed on May 14, 2015, except for changes in automatic teller machine usage fees announced prior to May 14, 2015.

(b) Nebraska automatic teller machine usage fees or agreements relating to Nebraska automatic teller machine usage fees in effect on May 14, 2015, shall remain unchanged until April 1, 2016, except for changes in automatic teller machine usage fees announced prior to May 14, 2015.

(c) There shall be a moratorium on the implementation of any agreement with new members relating to Nebraska automatic teller machine usage fees between May 14, 2015, and April 1, 2016, except for changes in automatic teller machine usage fees announced prior to May 14, 2015.

(d) Any agreement implemented on or after April 1, 2016, relating to Nebraska automatic teller machine usage fees shall comply with subsection (3) of this section.

(e) Commencing November 1, 2016, Nebraska automatic teller machine usage fees and any agreements relating to Nebraska automatic teller machine usage fees shall comply with subsection (3) of this section.

(15) For purposes of this section:

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

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

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

(d) Automatic teller machine usage fee means any per transaction fee established by a switch or otherwise established on behalf of an establishing financial institution and collected from the user financial institution and paid to the establishing financial institution for the use of the automatic teller machine. An automatic teller machine usage fee shall not include switch fees;

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

(f) Essentially the same service means the same Nebraska automatic teller machine transaction offered by an establishing financial institution irrespective of the user financial institution, the Nebraska customer of which initiates the Nebraska automatic teller machine transaction. A Nebraska automatic teller machine transaction that is subject to a surcharge is not essentially the same service as the same banking transaction for which a surcharge is not imposed;

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

(h) Financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the department, the United States, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; or a subsidiary of any such entity;

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

(j) Nebraska automatic teller machine transaction means a banking transaction as defined in subsection (1) of this section which is (i) initiated at an automatic teller machine established in whole or in part or sponsored by an establishing financial institution, (ii) for an account of a Nebraska customer of a user financial institution, and (iii) processed through a switch regardless of whether it is routed directly or indirectly from an automatic teller machine;

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

(l) Sponsoring an automatic teller machine means the acceptance of responsibility by an establishing financial institution for compliance with all provisions

of law governing automatic teller machines and Nebraska automatic teller machine transactions in connection with an automatic teller machine owned by a nonfinancial institution third party;

(m) Switch fee means a fee established by a switch and assessed to a user financial institution or to an establishing financial institution other than an automatic teller machine usage fee; and

(n) User financial institution means any financial institution which has a main chartered office or approved branch located in the State of Nebraska which avails itself of and provides its customers with automatic teller machine services.

**Source:** Laws 1987, LB 615, § 3; Laws 1992, LB 470, § 2; Laws 1993, LB 81, § 8; Laws 1993, LB 423, § 2; Laws 1999, LB 396, § 9; Laws 2000, LB 932, § 3; Laws 2002, LB 1089, § 3; Laws 2003, LB 131, § 4; Laws 2004, LB 999, § 2; Laws 2009, LB75, § 1; Laws 2009, LB327, § 4; Laws 2013, LB100, § 1; Laws 2015, LB348, § 2; Laws 2016, LB760, § 2; Laws 2017, LB140, § 56.  
Operative date August 24, 2017.

**8-158 Banks; appointment as personal representative or special administrator; authorized.**

Any bank may be appointed and shall have power to act, either by itself or jointly with any natural person or persons, as personal representative of the estate of any deceased person or as special administrator of the estate of any deceased person under the appointment of a court of record having jurisdiction of the estate of such deceased person. When a bank is so appointed and an oath is required to be made, whether in order to qualify or for any other purpose, the president, vice president, or secretary of the bank may, on behalf of the bank, make and subscribe to the required oath.

**Source:** Laws 1959, c. 18, § 1, p. 142; Laws 1961, c. 14, § 3, p. 107; Laws 1961, c. 16, § 1, p. 116; R.R.S.1943, § 8-1,117; Laws 1963, c. 29, § 58, p. 158; Laws 1973, LB 164, § 17; Laws 1986, LB 909, § 1; Laws 2017, LB140, § 57.  
Operative date August 24, 2017.

**8-160 Banks; trust department; amendment of charter; supervision.**

The director has the authority to issue to banks amendments to their charters of authority to transact trust business as defined in the Nebraska Trust Company Act and has general supervision and control over such trust department of banks.

**Source:** Laws 1959, c. 19, § 2, p. 143; Laws 1961, c. 14, § 5, p. 108; R.R.S.1943, § 8-1,119; Laws 1963, c. 29, § 60, p. 159; Laws 1993, LB 81, § 10; Laws 1998, LB 1321, § 11; Laws 2017, LB140, § 58.  
Operative date August 24, 2017.

**Cross References**

Nebraska Trust Company Act, see section 8-201.01.

**8-161 Banks; trust department; application; investigation; authorization.**

The director, before granting to any bank the right to operate a trust department, shall require such bank to make an application for amendment of its charter, setting forth such information as the director may require. If, upon investigation, the director is satisfied that the trust department of the bank requesting such amendment will be operated by officers of integrity and responsibility, the department shall, with such additional capital as the director shall require, issue to such bank an amendment to its charter, entitling it to operate a trust department and entitling it to transact the business provided for in the Nebraska Trust Company Act.

**Source:** Laws 1959, c. 19, § 3, p. 144; Laws 1961, c. 14, § 6, p. 108; R.R.S.1943, § 8-1,120; Laws 1963, c. 29, § 61, p. 159; Laws 1993, LB 81, § 11; Laws 1998, LB 1321, § 12; Laws 2017, LB140, § 59.

Operative date August 24, 2017.

**Cross References**

Nebraska Trust Company Act, see section 8-201.01.

**8-162.02 Bank; fiduciary account controlled by trust department; collateral; public funds exempt.**

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

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

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

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

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

(6) This section does not apply to a fiduciary account in which, pursuant to the terms of the governing instrument, full investment authority is retained by

the grantor or is vested in persons or entities other than the bank and the bank, acting in its fiduciary capacity, does not have the power to exert any influence over investment decisions.

**Source:** Laws 2009, LB327, § 2; Laws 2014, LB788, § 2; Laws 2017, LB140, § 60.

Operative date August 24, 2017.

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

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

(2) As used in this section, net profits on hand means the remainder of all earnings from current operations plus actual recoveries on loans and investments and other assets after deducting from the total thereof all current operating expenses, losses, and bad debts, accrued dividends on preferred stock, if any, and federal and state taxes, for the present and two immediately preceding calendar years.

**Source:** Laws 1909, c. 10, § 34, p. 82; R.S.1913, § 313; Laws 1919, c. 190, tit. V, art. XVI, § 34, p. 699; C.S.1922, § 8014; C.S.1929, § 8-153; Laws 1933, c. 18, § 34, p. 152; C.S.Supp.,1941, § 8-153; R.S. 1943, § 8-156; Laws 1963, c. 29, § 63, p. 160; Laws 1988, LB 996, § 3; Laws 2009, LB327, § 5; Laws 2017, LB140, § 61.  
Operative date August 24, 2017.

**8-164 Dividends declared; conditions.**

The board of directors of any bank may declare dividends on its capital stock but only under the following conditions:

(1) All bad debts required to be charged off by either the board of directors or the department shall first have been charged off. All debts due any bank on which interest is past due and unpaid for a period of six months, unless such debts are well secured or in the process of collection, shall be considered bad debts within the meaning of this section; and

(2) Twenty percent of the net profits accumulated since the preceding dividend shall first have been carried to the surplus fund unless such surplus fund equals or exceeds the amount of the paid-up capital stock.

**Source:** Laws 1909, c. 10, § 28, p. 79; R.S.1913, § 307; Laws 1919, c. 190, tit. V, art. XVI, § 28, p. 696; C.S.1922, § 8009; C.S.1929, § 8142; Laws 1930, Spec. Sess., c. 6, § 11, p. 31; Laws 1933, c. 18, § 27, p. 149; Laws 1935, c. 10, § 1, p. 78; Laws 1937, c. 16, § 1, p. 122; C.S.Supp.,1941, § 8-142; Laws 1943, c. 19, § 4, p. 104; R.S.1943, § 8-143; Laws 1951, c. 10, § 1, p. 82; Laws 1953, c. 7, § 1, p. 71; R.R.S.1943, § 8-143; Laws 1963, c. 29, § 64, p. 160; Laws 1985,

LB 653, § 6; Laws 1988, LB 996, § 4; Laws 1994, LB 979, § 6;  
Laws 2017, LB140, § 62.  
Operative date August 24, 2017.

**8-166 Banks; reports to department; form; number required; verification; waiver.**

(1) Every bank shall make to the department not less than two reports during each year according to the form which may be prescribed by the department, which report shall be certified as correct, in the manner prescribed by the department, by the president, vice president, cashier, or assistant cashier and in addition by two members of the board of directors.

(2) The director may waive the requirements of this section if a bank files its reports electronically with the Federal Deposit Insurance Corporation, the Federal Reserve Board, or an electronic collection agent of the Federal Deposit Insurance Corporation or the Federal Reserve Board.

**Source:** Laws 1909, c. 10, § 17, p. 75; R.S.1913, § 296; Laws 1919, c. 190, tit. V, art. XVI, § 17, p. 692; C.S.1922, § 7998; C.S.1929, § 8-129; Laws 1933, c. 18, § 19, p. 144; Laws 1941, c. 10, § 1, p. 80; C.S.Supp.,1941, § 8-129; R.S.1943, § 8-131; Laws 1957, c. 11, § 1, p. 134; Laws 1961, c. 15, § 2, p. 111; R.R.S.1943, § 8-131; Laws 1963, c. 29, § 66, p. 161; Laws 1997, LB 137, § 7; Laws 2017, LB140, § 63.

Operative date August 24, 2017.

**8-167 Banks; reports to department; contents; publication.**

Each report required by section 8-166 shall exhibit in detail and under appropriate headings the resources and liabilities of the bank at the close of business on any past day specified by the call for report and shall be submitted to the department within thirty days, or as may be required by the department, after the receipt of requisition for the report. A summary of such report in the form prescribed by the department shall be published one time in a legal newspaper in the place where the main office of such bank is located. If there is no legal newspaper in the place where the main office of the bank is located, then such summary shall be published in a legal newspaper published in the same county or, if none is published in the county, in a legal newspaper of general circulation in the county. Such publication shall be at the expense of such bank. Proof of such publication shall be transmitted to the department within thirty days, or as may be required by the director, from the date fixed for such report.

**Source:** Laws 1909, c. 10, § 18, p. 75; R.S.1913, § 297; Laws 1919, c. 190, tit. V, art. XVI, § 18, p. 693; C.S.1922, § 7999; C.S.1929, § 8-130; Laws 1933, c. 18, § 20, p. 145; Laws 1941, c. 10, § 2, p. 81; C.S.Supp.,1941, § 8-130; R.S.1943, § 8-132; Laws 1963, c. 29, § 67, p. 161; Laws 1978, LB 641, § 2; Laws 1986, LB 960, § 1; Laws 2017, LB140, § 64.

Operative date August 24, 2017.

**8-167.01 Banks; publication requirements not applicable; when.**

The publication requirements of section 8-167 shall not apply to any bank that makes a disclosure statement available to any member of the general

public upon request in compliance with the disclosure of financial information provisions of 12 C.F.R. part 350, as such part existed on January 1, 2017.

**Source:** Laws 1995, LB 384, § 18; Laws 2013, LB213, § 4; Laws 2017, LB140, § 65.

Operative date August 24, 2017.

**8-168 Banks; special reports to director.**

A bank shall furnish special reports as may be required by the director to enable the department to obtain full and complete knowledge of the condition of the bank.

**Source:** Laws 1909, c. 10, § 19, p. 76; R.S.1913, § 298; Laws 1919, c. 190, tit. V, art. XVI, § 19, p. 693; C.S.1922, § 8000; C.S.1929, § 8-131; Laws 1933, c. 18, § 21, p. 145; C.S.Supp.,1941, § 8-131; R.S. 1943, § 8-133; Laws 1963, c. 29, § 68, p. 161; Laws 2017, LB140, § 66.

Operative date August 24, 2017.

**8-169 Banks; reports; published statements; failure to make; penalty, recovery.**

Any bank that fails, neglects, or refuses to make or furnish any report or any published statement required by the Nebraska Banking Act shall pay to the department a penalty of fifty dollars for each day such failure shall continue, unless the director shall extend the time for filing such report.

**Source:** Laws 1909, c. 10, § 20, p. 76; R.S.1913, § 299; Laws 1919, c. 190, tit. V, art. XVI, § 20, p. 693; C.S.1922, § 8001; C.S.1929, § 8-132; Laws 1933, c. 18, § 22, p. 146; C.S.Supp.,1941, § 8-132; R.S. 1943, § 8-134; R.R.S.1943, § 8-134; Laws 1963, c. 29, § 59, p. 162; Laws 1973, LB 164, § 18; Laws 1998, LB 1321, § 14; Laws 2017, LB140, § 67.

Operative date August 24, 2017.

**8-170 Records and files; time required to be kept; destroy, when.**

(1) Banks shall not be required to preserve or keep their records or files or copies thereof for a period longer than six years next after the first day of January of the year following the time of the making or filing of such records or files except as provided in subsection (2) of this section.

(2)(a) Ledger sheets showing unpaid balances in favor of depositors of banks shall not be destroyed unless the bank has remitted such unpaid balances to the State Treasurer in accordance with the Uniform Disposition of Unclaimed Property Act. Banks shall retain a record of every such remittance for ten years following the date of such remittance.

(b) Corporate records that relate to the corporation or the corporate existence of the bank shall not be destroyed.

(3) All records or files or copies thereof shall be readable or legible.

**Source:** Laws 1949, c. 10, § 1, p. 71; R.R.S.1943, § 8-1,111; Laws 1963, c. 29, § 70, p. 162; Laws 1999, LB 396, § 10; Laws 2017, LB140, § 68.

Operative date August 24, 2017.



## Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

**8-171 Records; destruction; liability; excuse for failure to produce.**

No liability shall accrue against any bank destroying any records or files in accordance with sections 8-170 to 8-174. In any cause or proceedings in which any such records or files may be called into question or be demanded of the bank or any officer or employee of the bank, a showing that such records or files have been destroyed in accordance with the terms of sections 8-170 to 8-174 shall be a sufficient excuse for the failure to produce such records or files.

**Source:** Laws 1949, c. 10, § 2, p. 71; R.R.S.1943, § 8-1,112; Laws 1963, c. 29, § 71, p. 162; Laws 2017, LB140, § 69.  
Operative date August 24, 2017.

**8-173 Actions against bank on claims inconsistent with records; accrual of cause of action; limitations.**

All causes of action against a bank based upon a claim or claims inconsistent with an entry or entries in any bank record or ledger, made in the regular course of business, shall accrue one year after the date of such entry or entries. No action founded upon such a cause shall be brought after the expiration of five years from the date of such accrual.

**Source:** Laws 1949, c. 10, § 4, p. 71; Laws 1951, c. 13, § 1, p. 88; R.R.S.1943, § 8-1,114; Laws 1963, c. 29, § 73, p. 163; Laws 2017, LB140, § 70.  
Operative date August 24, 2017.

**8-174 Records and files; destruction; applicable to national banks.**

Sections 8-170 to 8-174, so far as may be permitted by the laws of the United States, shall apply to the records and files of national banks.

**Source:** Laws 1949, c. 10, § 5, p. 72; R.R.S.1943, § 8-1,115; Laws 1963, c. 29, § 74, p. 163; Laws 2017, LB140, § 71.  
Operative date August 24, 2017.

**8-175 Banks; false entry or statement; other offenses relating to books and records; penalty.**

Any person who willfully and knowingly subscribes to, or makes, or causes to be made, any false statement or false entry in the books of any bank, knowingly subscribes to or exhibits false papers with the intent to deceive any person or persons authorized to examine into the affairs of any such bank, makes, states, or publishes any false statement of the amount of the assets or liabilities of any such bank, fails to make true and correct entry in the books and records of such bank of its business and transactions in the manner and form prescribed by the department, mutilates, alters, destroys, secretes, or removes any of the books or records of such bank without the written consent of the director, or makes, states, or publishes any false statement of the amount of the assets or liabilities of any such bank, is guilty of a Class III felony.

**Source:** Laws 1909, c. 10, § 21, p. 77; R.S.1913, § 300; Laws 1919, c. 190, tit. V, art. XVI, § 21, p. 694; C.S.1922, § 8002; C.S.1929, § 8-133; Laws 1933, c. 18, § 23, p. 146; C.S.Supp.,1941, § 8-133; R.S.

1943, § 8-135; Laws 1963, c. 29, § 75, p. 163; Laws 1977, LB 40, § 51; Laws 2017, LB140, § 72.  
Operative date August 24, 2017.

**8-177 Banks; consolidation; approval required; creditors' claims.**

Any bank, which is in good faith winding up its business for the purpose of consolidating with some other financial institution, may transfer its resources and liabilities to the financial institution with which it is in the process of consolidation, but no consolidation shall be made without the consent of the director, nor shall such consolidation operate to defeat the claim of any creditor or hinder any creditor in the collection of his or her debt against any such bank or financial institution.

**Source:** Laws 1909, c. 10, § 41, p. 86; R.S.1913, § 320; Laws 1919, c. 190, tit. V, art. XVI, § 41, p. 701; C.S.1922, § 8021; C.S.1929, § 8-160; Laws 1933, c. 18, § 36, p. 154; C.S.Supp.,1941, § 8-160; R.S. 1943, § 8-164; Laws 1963, c. 29, § 77, p. 164; Laws 2017, LB140, § 73.

Operative date August 24, 2017.

**8-178 National bank; reorganization as state bank; authorization; vote required; trust company business; conversion; public hearing; when.**

(1) Any national bank located and doing business within the State of Nebraska which follows the procedure prescribed by the laws of the United States may convert into a state bank or merge or consolidate with a state bank upon a vote of the holders of at least two-thirds of the capital stock of such state bank when the resulting state bank meets the requirements of the state law as to the formation of a new state bank. If the national bank has been further chartered to conduct a trust company business within a trust department of the bank, the trust department to be converted shall meet the requirements of state law as to the formation of a trust company business within a trust department of a state bank.

(2) The public hearing requirement of subdivision (1) of section 8-115.01 and the rules and regulations of the director shall be required only if (a) after publishing a notice of the proposed conversion in a newspaper of general circulation in the county where the main office of the national bank is located, the expense of which shall be paid by the applicant bank, the director receives an objection to the conversion within fifteen days after such publication or (b) in the discretion of the director, the condition of the bank warrants a hearing. If the national bank has been further chartered to conduct a trust company business within a trust department of the bank, the notice of the proposed conversion of the national bank shall include notice that the trust department will be converted in connection with the national bank conversion.

**Source:** Laws 1909, c. 11, § 1, p. 96; R.S.1913, § 343; Laws 1919, c. 190, tit. V, art. XVI, § 63, p. 711; C.S.1922, § 8043; C.S.1929, § 8-161; Laws 1933, c. 18, § 37, p. 154; C.S.Supp.,1941, § 8-161; R.S. 1943, § 8-165; Laws 1951, c. 11, § 1(1), p. 84; R.R.S.1943, § 8-165; Laws 1963, c. 29, § 78, p. 165; Laws 1995, LB 599, § 3; Laws 2002, LB 957, § 5; Laws 2006, LB 876, § 10; Laws 2017, LB140, § 74.

Operative date August 24, 2017.

**8-179 National bank; reorganization as state bank; procedure; trust company business; charter.**

(1) The resulting state bank under section 8-178 shall file a statement with the department, under the oath of its president or cashier, (a) showing that the procedure prescribed by the laws of the United States and by this state have been followed, (b) setting forth in the statement the matter prescribed by sections 8-1901 to 8-1903, and (c) if the national bank has been further chartered to conduct a trust company business within a trust department of the bank, setting forth the matter prescribed by sections 8-159 to 8-162.01. Upon payment of all applicable fees, the department shall issue to such corporation, a charter to transact the business provided for in its articles of incorporation, and, if applicable, a charter to conduct a trust company business within a trust department of the bank.

(2) The department may accept good assets of any such national bank, worth not less than par, in lieu of the payment otherwise provided by law for the stock of such resulting bank. When the parties requesting the conversion, merger, or consolidation are officers or directors of either the national bank or of the state bank, they shall be accepted without investigation as parties of integrity and responsibility. Unless the resulting bank is at a different location than the former national or state bank, the department shall recognize the public necessity, convenience, and advantage of permitting the resulting bank and, if applicable, the trust company business within a trust department of the bank, to engage in business.

**Source:** Laws 1951, c. 11, § 1(2), p. 84; R.R.S.1943, § 8-165.01; Laws 1963, c. 29, § 79, p. 165; Laws 1995, LB 384, § 5; Laws 2006, LB 876, § 11; Laws 2017, LB140, § 75.  
Operative date August 24, 2017.

**8-180 State bank; reorganization as national bank; vote required.**

Any state bank, without the approval of any state authority, may, upon a vote of the holders of at least two-thirds of its capital stock, convert into and merge or consolidate with a national bank as provided by federal law.

**Source:** Laws 1951, c. 11, § 1(3), p. 85; R.R.S.1943, § 8-165.02; Laws 1963, c. 29, § 80, p. 165; Laws 2017, LB140, § 76.  
Operative date August 24, 2017.

**8-182 State bank; conversion, merger, or consolidation with a national bank; objecting stockholders; stock; payment.**

The owner of shares of a state bank which were voted against a conversion into or a merger or consolidation with a national bank under section 8-181 shall be entitled to receive, from the assets of such state bank, the value of such stock in cash, when the conversion, merger, or consolidation becomes effective, upon written demand made to the resulting bank at any time within thirty days after the effective date of the conversion, merger, or consolidation, accompanied by the surrender of the stock certificates. The value of such shares shall be determined, as of the date of the shareholders' meeting approving the conversion, merger, or consolidation, by three appraisers, one to be selected by the owners of two-thirds of the shares voting against the conversion, merger, or consolidation, one by the board of directors of the resulting state bank, and the third by the two so chosen. If the appraisal is not completed within sixty days

after the conversion, merger, or consolidation becomes effective the department shall cause an appraisal to be made and such appraisal shall then govern. The expenses of appraisal shall be paid by the resulting bank.

**Source:** Laws 1951, c. 11, § 1(5), p. 85; R.R.S.1943, § 8-165.04; Laws 1963, c. 29, § 82, p. 166; Laws 2017, LB140, § 77.  
Operative date August 24, 2017.

**8-183 National or state bank; conversion, merger, or consolidation; resulting bank; assets; valuation.**

Without approval by the director, no asset shall be carried on the books of the bank resulting pursuant to section 8-181, when the resulting bank is a state bank, at a valuation higher than that on the books of the converting, merging, or consolidating bank at the time of the examination, by a state or national bank examiner, last occurring before the effective date of the conversion, merger, or consolidation.

**Source:** Laws 1951, c. 11, § 1(6), p. 86; R.R.S.1943, § 8-165.05; Laws 1963, c. 29, § 83, p. 167; Laws 2017, LB140, § 78.  
Operative date August 24, 2017.

**8-183.04 State or federal savings association; mutual savings association; retention of mutual form authorized.**

(1) Notwithstanding any other provision of the Nebraska Banking Act or any other Nebraska law, a state or federal savings association which was formed and in operation as a mutual savings association as of July 15, 1998, may elect to retain its mutual form of corporate organization upon conversion to a state bank.

(2) All references to shareholders or stockholders for state banks shall be deemed to be references to members for such a converted savings association.

(3) The amount and type of capital required for such a converted savings association shall be as required for federal mutual savings associations in 12 C.F.R. part 567, as such part existed on January 1, 2017, except that if at any time the department determines that the capital of such a converted savings association is impaired, the director may require the members to make up the capital impairment.

(4) The director may adopt and promulgate rules and regulations governing such converted mutual savings associations. In adopting and promulgating such rules and regulations, the director may consider the provisions of sections 8-301 to 8-384 governing savings associations in mutual form of corporate organization.

**Source:** Laws 1998, LB 1321, § 30; Laws 2005, LB 533, § 10; Laws 2010, LB890, § 5; Laws 2017, LB140, § 79.  
Operative date August 24, 2017.

**8-183.05 State or federal savings association; issuance of state bank charter; effect; section, how construed.**

(1) Upon the issuance of a state bank charter to a converting savings association, the corporate existence of the converting savings association shall not terminate, but such bank shall be a continuation of the entity so converted and all property of the converted savings association, including its rights, titles,

and interests in and to all property of whatever kind, whether real, personal, or mixed, things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, or pertaining to it, or which would inure to it, immediately, by operation of law and without any conveyance or transfer and without any further act or deed, shall vest in and remain the property of such converted savings association, and the same shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by the converting savings association.

(2) Upon issuance of the charter, the new state bank shall continue to have and succeed to all the rights, obligations, and relations of the converting savings association.

(3) All pending actions and other judicial proceedings to which the converting savings association is a party shall not be abated or discontinued by reason of such conversion but may be prosecuted to final judgment, order, or decree in the same manner as if such conversion had not been made, and such converted savings association may continue the actions in its new corporate name. Any judgment, order, or decree may be rendered for or against the converting savings association theretofore involved in the proceedings.

(4) Nothing in this section shall be construed to authorize a converted savings association to establish branches except as permitted by section 8-157 and the Interstate Branching and Merger Act. This subsection shall not be construed to require divestiture of any branches of a savings association in existence at the time of the conversion to a state bank charter.

**Source:** Laws 1998, LB 1321, § 31; Laws 2002, LB 1089, § 4; Laws 2012, LB963, § 3; Laws 2017, LB140, § 80.  
Operative date August 24, 2017.

**Cross References**

Interstate Branching and Merger Act, see section 8-2101.

**8-184 Voluntary liquidation; approval required; examination; fees.**

Whenever any bank shall desire to go into voluntary liquidation, it shall first obtain the written consent of the director who may, before granting such request, order a special examination of the affairs of such bank, for which the same fees may be collected as in regular examination.

**Source:** Laws 1909, c. 10, § 34, p. 83; R.S.1913, § 313; Laws 1919, c. 190, tit. V, art. XVI, § 34, p. 699; C.S.1922, § 8014; C.S.1929, § 8-153; Laws 1933, c. 18, § 34, p. 153; C.S.Supp., 1941, § 8-153; R.S. 1943, § 8-158; Laws 1963, c. 29, § 84, p. 167; Laws 2017, LB140, § 81.  
Operative date August 24, 2017.

**8-185 Voluntary liquidation; procedure.**

Any bank may voluntarily liquidate by paying off all its depositors in full. The bank so liquidating shall file a certified statement with the department, setting forth the fact that all its liabilities have been paid and naming its stockholders with the amount of stock held by each, and surrender its charter. The department shall cause an examination to be made of any such bank for the purpose of determining that all of its liabilities, except liabilities to stockholders, have been paid. Upon such examination, if it appears that all liabilities other than

liabilities to stockholders have been paid, the bank shall cease to be subject to the Nebraska Banking Act.

**Source:** Laws 1909, c. 10, § 42, p. 86; R.S.1913, § 321; Laws 1919, c. 190, tit. V, art. XVI, § 42, p. 702; Laws 1921, c. 299, § 1, p. 954; C.S.1922, § 8022; C.S.1929, § 8-169; Laws 1933, c. 18, § 39, p. 155; C.S.Supp.,1941, § 8-169; R.S.1943, § 8-159; Laws 1963, c. 29, § 85, p. 167; Laws 1987, LB 2, § 10; Laws 1998, LB 1321, § 15; Laws 2017, LB140, § 82.  
Operative date August 24, 2017.

**8-186 Bank; possession; voluntary surrender to department; notice; posting; liens dissolved.**

Any bank may place its affairs and assets under the control of the department by posting on its door the following notice: This bank is in the hands of the Department of Banking and Finance. The posting of such notice, or the taking possession of any bank by the department or by any financial institution examiner shall be sufficient to place all of its assets of whatever nature immediately in the possession of the department, and shall operate as a bar to the levying of attachments or executions thereon, and shall operate to dissolve and release all levies, judgment liens, attachments, or other liens obtained through legal proceedings within sixty days next preceding the posting of such notice or the taking possession of such bank by the department.

**Source:** Laws 1909, c. 10, § 43, p. 86; R.S.1913, § 322; Laws 1919, c. 190, tit. V, art. XVI, § 43, p. 703; C.S.1922, § 8023; C.S.1929, § 8-170; Laws 1933, c. 18, § 40, p. 156; C.S.Supp.,1941, § 8-170; R.S. 1943, § 8-172; Laws 1963, c. 29, § 86, p. 168; Laws 2017, LB140, § 83.  
Operative date August 24, 2017.

**8-187 Banks; department may take possession; when; examination of affairs; liens dissolved; retention of possession.**

Whenever it appears to the director from any examination or report provided for by the laws of this state that (1) the capital of any bank is impaired, (2) a bank is conducting its business in an unsafe or unauthorized manner, (3) a bank is endangering the interests of its depositors, (4) a bank, upon its failure, refuses to make any of the reports or statements required by the laws of this state, (5) the officers or employees of any bank refuse to submit its books, papers, and affairs to the inspection of any examiner, (6) any officer of a bank refuses to be examined upon oath touching the affairs of the bank, (7) from any examination or report provided for by law, the director has reason to conclude that a bank is in an unsafe or unsound condition to transact the business for which it is organized or that it is unsafe and inexpedient for the bank to continue its business, or (8) a bank neglects or refuses to observe any order of the director, the department may immediately take possession of the property and business of the bank, conduct the affairs of the bank, and retain possession of all money, rights, credits, assets, and property of every description belonging to the bank, as against any mesne or final process issued by any court against the bank whose property has been taken and retain possession for a sufficient time to make an examination of its affairs and dispose of such property as provided by law. All levies, judgment liens, attachments, or other liens obtained

through legal proceedings against the bank or its property, acquired within sixty days next preceding the taking of possession of the bank, in the event the bank is liquidated and the business of the bank is not resumed or carried on after the taking of possession of the bank by the department, shall be void and the property affected by the levy, judgment lien, attachment, or other lien so obtained shall be wholly discharged and released from any levy, judgment lien, attachment, or other lien. The department shall retain possession of the property and business of the bank until the bank resumes business or its affairs are finally liquidated under the Nebraska Banking Act.

**Source:** Laws 1909, c. 10, § 48, p. 89; R.S.1913, § 328; Laws 1919, c. 190, tit. V, art. XVI, § 49, p. 705; C.S.1922, § 8029; Laws 1923, c. 191, § 11, p. 443; Laws 1925, c. 30, § 1, p. 122; Laws 1929, c. 38, § 16, p. 164; C.S.1929, § 8-181; Laws 1933, c. 18, § 42, p. 157; C.S.Supp.,1941, § 8-181; R.S.1943, § 8-173; Laws 1963, c. 29, § 87, p. 168; Laws 1987, LB 2, § 11; Laws 1998, LB 1321, § 16; Laws 2017, LB140, § 84.

Operative date August 24, 2017.

**8-188 Banks; possession by department; effective upon notice.**

The director or any deputy, counsel, or examiner authorized by the director may, on behalf of the department, take possession of a bank by handing to the president, cashier, or any person in charge of the bank, a written notice that the bank is in the possession of the department.

**Source:** Laws 1925, c. 30, § 2, p. 123; C.S.1929, § 8-183; Laws 1933, c. 18, § 45, p. 159; C.S.Supp.,1941, § 8-183; R.S.1943, § 8-174; Laws 1963, c. 29, § 88, p. 169; Laws 2017, LB140, § 85.

Operative date August 24, 2017.

**8-189 Banks; attempted prevention of possession by department; penalty.**

Any officer, director, or employee of a bank who attempts to prevent the department from taking possession of such bank is guilty of a Class I misdemeanor.

**Source:** Laws 1923, c. 191, § 14, p. 445; C.S.1929, § 8-184; Laws 1933, c. 18, § 46, p. 159; C.S.Supp.,1941, § 8-184; R.S.1943, § 8-175; Laws 1963, c. 29, § 89, p. 169; Laws 1977, LB 40, § 52; Laws 2017, LB140, § 86.

Operative date August 24, 2017.

**8-190 Banks; possession by department; refusal to deliver; possession by banks; application for court order.**

Whenever any bank refuses or neglects to deliver possession of its affairs, assets, or property of whatever nature to the department or to any person ordered or appointed to take charge of such bank according to the Nebraska Banking Act, the director shall make an application to the district court of the county in which the main office of such bank is located or to any judge of such court for an order placing the department or such person in charge thereof and of its affairs and property. If the judge of the district court having jurisdiction is absent from the district at the time such application is to be made, any judge of the Court of Appeals or Supreme Court may grant such order, but the petition

and order of possession shall be immediately transmitted to the clerk of the district court of the county in which the main office of such bank is located.

**Source:** Laws 1909, c. 10, § 56, p. 94; R.S.1913, § 336; Laws 1919, c. 190, tit. V, art. XVI, § 57, p. 709; C.S.1922, § 8037; C.S.1929, § 8-185; Laws 1933, c. 18, § 47, p. 159; C.S.Supp.,1941, § 8-185; R.S. 1943, § 8-176; Laws 1963, c. 29, § 90, p. 170; Laws 1987, LB 2, § 12; Laws 1991, LB 732, § 12; Laws 1998, LB 1321, § 17; Laws 2017, LB140, § 87.

Operative date August 24, 2017.

**8-191 Banks; possession by department; notice to banks and trust companies; notice or knowledge of possession forestalls liens.**

Upon taking possession of the property and business of any bank, the department shall immediately give notice of such fact by letter or electronic mail to all banks or trust companies holding or in possession of any assets of such bank, so far as known by the department. No bank or trust company so notified or knowing of such possession by the department shall have a lien or charge for any payment, advance, or clearance thereafter made, or liability thereafter incurred, against any of the assets of the bank of whose property and business the department shall have taken possession unless the bank be continued as a going concern.

**Source:** Laws 1923, c. 191, § 16, p. 445; C.S.1929, § 8-187; Laws 1933, c. 18, § 49, p. 160; C.S.Supp.,1941, § 8-187; R.S.1943, § 8-177; Laws 1963, c. 29, § 91, p. 170; Laws 2017, LB140, § 88.

Operative date August 24, 2017.

**8-192 Banks; possession by department; inventory of assets and liabilities; filing.**

Upon taking charge of any bank, the director shall cause to be made an inventory in triplicate of all the property, assets, and liabilities of the bank so far as the property, assets, and liabilities of the bank can be ascertained. One copy of the inventory shall be filed with the director, one copy of the inventory retained in the bank, and, after the declaration of insolvency of the bank as provided in section 8-194, one copy of the inventory shall be filed with the clerk of the district court of the county in which the main office of the bank is located.

**Source:** Laws 1929, c. 38, § 21, p. 167; C.S.1929, § 8-188; Laws 1933, c. 18, § 50, p. 161; C.S.Supp.,1941, § 8-188; R.S.1943, § 8-178; Laws 1963, c. 29, § 92, p. 170; Laws 2017, LB140, § 89.

Operative date August 24, 2017.

**8-193 Banks; redelivery of possession; bond; departmental supervision; re-possession by department.**

Whenever the officers, directors, stockholders, or owners of any insolvent bank give good and sufficient bond running to the department with an incorporated surety company authorized by the laws of this state to transact such business, conditioned upon the full settlement of all the liabilities of such bank by such officers, directors, stockholders, or owners within a stated time, and the bond is approved by the director, then the department shall turn over all the assets of such bank to the officers, directors, stockholders, or owners of the



bank furnishing the bond, reserving the same right to require report of the condition and to examine into the affairs of the bank as existed in the department previous to its closing. If, upon such examination, it is found by the department that the officers, directors, stockholders, or owners are not closing up the affairs of the bank in such manner as to discharge its liabilities and to close up its affairs in a manner satisfactory to the department within a reasonable time, the department shall take immediate possession of the bank for liquidation under the Nebraska Banking Act.

**Source:** Laws 1919, c. 190, tit. V, art. XVI, § 8, p. 688; C.S.1922, § 7989; Laws 1923, c. 191, § 13, p. 444; C.S.1929, § 8-189; Laws 1933, c. 18, § 51, p. 161; C.S.Supp.,1941, § 8-189; R.S.1943, § 8-179; Laws 1963, c. 29, § 93, p. 171; Laws 1987, LB 2, § 13; Laws 1998, LB 1321, § 18; Laws 2017, LB140, § 90.  
Operative date August 24, 2017.

**8-194 Insolvent banks; determination; declaration by director; filing.**

Upon determination of insolvency of any bank by the director and failure of the stockholders or owners to restore solvency within the time and in the manner provided by law, or upon violation of the laws of the state by the bank, the director shall make a finding in writing of the condition of the affairs of such bank and a declaration of insolvency and such finding and declaration shall be filed with the clerk of the district court of the county in which the main office of such bank is located.

**Source:** Laws 1929, c. 38, § 10, p. 162; C.S.1929, § 8-190; Laws 1933, c. 18, § 53, p. 162; Laws 1935, c. 16, § 1, p. 89; C.S.Supp.,1941, § 8-190; R.S.1943, § 8-180; Laws 1963, c. 29, § 94, p. 171; Laws 2017, LB140, § 91.  
Operative date August 24, 2017.

**8-195 Insolvent banks; possession by department; petition to enjoin; show cause order; findings by district court; disposition of case.**

Whenever any bank of whose property and business the department has taken possession or whose insolvency has been declared under section 8-194 deems itself aggrieved by such actions, it may, at any time not later than ten days after such declaration of insolvency has been filed with the clerk of the district court of the county in which the main office of the bank is located, petition the district court to enjoin further proceedings. The court, after citing the Director of Banking and Finance to show cause why further proceedings should not be enjoined, hearing the allegations and proofs of the parties, and determining the facts, may, upon proof by the bank, its officers, or its directors that it is solvent, that the business of the bank has been and is being conducted as provided by law, that it is not endangering the interests of its depositors and other creditors, and that the Director of Banking and Finance has acted arbitrarily and abused his or her discretion either by taking possession of the bank or by finding and declaring the bank to be insolvent and ordering its liquidation, set aside such declaration of insolvency and enjoin the director from proceeding further, and direct him or her to surrender the business and property to the bank. On proof that the bank is insolvent and that its stockholders or owners have failed to restore solvency as provided by law, or that the

bank is being operated in violation of law, and that the director has acted within his or her powers, the petition shall be dismissed by the court.

**Source:** Laws 1929, c. 38, § 10, p. 162; C.S.1929, § 8-190; Laws 1933, c. 18, § 53, p. 162; Laws 1935, c. 16, § 1, p. 89; C.S.Supp.,1941, § 8-190; R.S.1943, § 8-181; Laws 1963, c. 29, § 95, p. 172; Laws 2017, LB140, § 92.

Operative date August 24, 2017.

**8-196 Insolvent banks; liquidation; injunction; appeal; bond.**

An appeal under section 8-195 shall operate as a stay of judgment of the district court, and no bond need be given if the appeal is taken by the director. If the appeal is taken by the bank, a bond shall be given as required by law for an appeal in civil cases.

**Source:** Laws 1933, c. 18, § 53, p. 162; Laws 1935, c. 16, § 1, p. 89; C.S.Supp.,1941, § 8-190; R.S.1943, § 8-182; Laws 1963, c. 29, § 96, p. 172; Laws 1991, LB 732, § 13; Laws 2017, LB140, § 93.

Operative date August 24, 2017.

**8-197 Insolvent banks; liquidation by Federal Deposit Insurance Corporation or by liquidating trustees.**

(1) Pending final judgment on the petition to enjoin under section 8-195, the department shall retain possession of the property and business of the bank. If not enjoined, the director shall proceed to liquidate the affairs of the bank as provided in the Nebraska Banking Act, except that: (a) The Federal Deposit Insurance Corporation may, under the laws of this state, accept the appointment as receiver or liquidating agent of any insolvent bank the deposits of which are insured by the Federal Deposit Insurance Corporation; or (b) when any bank is declared insolvent and ordered to be liquidated and the deposits of such bank are not insured by the Federal Deposit Insurance Corporation, then depositors and other creditors of such insolvent bank, representing fifty-one percent or more of the deposits and other claims in number and in amount of the total thereof, shall have the right to liquidate such insolvent bank by and through liquidating trustees, who shall have the same power as the department and the director to liquidate such bank if, within thirty days after the filing of the declaration of insolvency, articles of trusteeship executed and acknowledged by fifty-one percent or more of the depositors and other creditors in number, representing fifty-one percent or more of the total of all deposits and claims in such bank, are filed with the director. The articles creating the trusteeship shall be in writing, shall name the trustees, shall state the terms and conditions of such trust, and shall become effective when it is determined by the director that fifty-one percent or more of the depositors and other creditors in number, representing fifty-one percent or more of the total of all deposits and claims in such bank, have signed and acknowledged the same. All nonconsenting depositors and other creditors of the insolvent bank shall be held to be subject to the terms and conditions of such trusteeship to the same extent and with the same effect as if they had joined in the execution thereof, and their respective claims shall be treated in all respects as if they had joined in the execution of such articles of trusteeship. Upon finding that such articles have been executed and acknowledged as provided in this section, the director shall thereupon transfer all of the assets of the insolvent bank to such liquidating

trustees and take their receipt therefor, and all duties and responsibilities of the department and the director as otherwise provided by law with respect to such liquidation shall be assumed by such liquidating trustees. The director shall then be relieved from further responsibility in connection therewith, and the director and the person who issued the applicable bond or equivalent commercial insurance policy shall be released from further liability on the director's official bond or equivalent commercial insurance policy in respect to such liquidation. The trustees shall then proceed to liquidate such bank as nearly as may be in the manner provided by law for the liquidation of insolvent banks by the department acting as receiver and liquidating agent.

(2) When the Federal Deposit Insurance Corporation or any party other than the department is appointed receiver and liquidating agent of an insolvent bank or other financial institution chartered by the department, all references to the department or the director as provided in the act for the liquidation of such banks and financial institutions shall mean the Federal Deposit Insurance Corporation or other appointed receiver and liquidating agent.

**Source:** Laws 1933, c. 18, § 53, p. 163; Laws 1935, c. 16, § 1, p. 90; C.S.Supp.,1941, § 8-190; R.S.1943, § 8-183; Laws 1963, c. 29, § 97, p. 173; Laws 1987, LB 2, § 14; Laws 1988, LB 994, § 1; Laws 1998, LB 1321, § 19; Laws 2004, LB 884, § 5; Laws 2017, LB140, § 94.

Operative date August 24, 2017.

**8-198 Financial institutions; designation of receiver and liquidating agent; department; powers.**

The department may be designated the receiver and liquidating agent for any financial institution chartered by the department and, subject to the district court's supervision and control, may proceed to liquidate such financial institution or reorganize it in accordance with the Nebraska Banking Act.

**Source:** Laws 1929, c. 38, § 11, p. 163; C.S.1929, § 8-192; Laws 1933, c. 18, § 52, p. 162; Laws 1941, c. 9, § 1, p. 79; Laws 1941, c. 180, § 1, p. 700; C.S.Supp.,1941, § 8-192; R.S.1943, § 8-184; Laws 1963, c. 29, § 98, p. 174; Laws 1985, LB 653, § 7; Laws 1998, LB 1321, § 20; Laws 2017, LB140, § 95.

Operative date August 24, 2017.

**8-199 Financial institutions; department as receiver; powers; no compensation to director.**

Whenever the department has been designated receiver for a financial institution chartered by the department, the department shall have all the powers and privileges provided by the laws of this state with respect to any other receiver and such incidental powers as shall be necessary to carry out an orderly and efficient liquidation or reorganization of any such financial institution for which the department may have become receiver, either by operation of law or by judicial appointment. Acting by and through the director, the department may in its own name as such receiver enforce on behalf of such financial institution or its creditors, shareholders, or owners, by actions at law or in equity, all debts or other obligations of whatever kind or nature due to such financial institution or the creditors or shareholders thereof. In like manner, the department may make, execute, and deliver any and all deeds, assignments,

and other instruments necessary and proper to effectuate any sale of real or personal property, or the settlement of any obligations belonging or due to such financial institution for which the department may have become receiver, or its creditors, shareholders, or owners, when such sale or settlement is approved by the district court of the county in which the main office of such financial institution is located. The director shall receive no fees, salary, or other compensation for his or her services in connection with the liquidation or reorganization of such financial institutions other than his or her salary.

**Source:** Laws 1941, c. 9, § 1, p. 79; Laws 1941, c. 180, § 1, p. 700; C.S.Supp.,1941, § 8-192; R.S.1943, § 8-185; Laws 1963, c. 29, § 99, p. 174; Laws 1985, LB 653, § 8; Laws 2017, LB140, § 96. Operative date August 24, 2017.

**8-1,100 Insolvent banks; liquidation; special deputies, assistants, counsel; appointment; compensation; discharge.**

The director may, under his or her hand and official seal, appoint such special deputies or assistants as he or she may find necessary for the efficient and economical liquidation of insolvent banks, with powers specified in the certificate of appointment, to assist him or her in the liquidation. The certificate shall be filed with the director and a certified copy with the clerk of the district court of the county in which the main office of such bank is located. He or she may also employ such counsel and expert assistance as may be necessary to perform the work of liquidation. He or she shall, subject to the approval of the district court of the county in which the main office of the insolvent bank is located, fix the compensation for the services rendered by such special deputies, assistants, and counsel, which shall be taxed as costs of the liquidation. He or she may discharge such special deputies, assistants, or counsel at any time or may assign them to one or more liquidations or transfer them from one liquidation to another.

**Source:** Laws 1929, c. 38, § 13, p. 163; C.S.1929, § 8-194; Laws 1933, c. 18, § 56, p. 164; Laws 1933, c. 96, § 2, p. 382; C.S.Supp.,1941, § 8-194; R.S.1943, § 8-186; Laws 1963, c. 29, § 100, p. 175; Laws 2017, LB140, § 97. Operative date August 24, 2017.

**8-1,101 Insolvent banks; liquidation; special deputies, assistants; bond or insurance; conditions.**

Upon the declaration of insolvency, the director shall require bonds or equivalent commercial insurance policies from the special deputies or assistants in sums and with such condition as the director shall specify, to be approved by the district court. The costs of any such bond or policy shall be taxed as costs in the liquidation. Such bond or policy shall be conditioned for the faithful performance of duty, and include indemnity to the department as receiver and liquidating agent.

**Source:** Laws 1929, c. 38, § 14, p. 164; C.S.1929, § 8-195; Laws 1933, c. 18, § 60, p. 165; C.S.Supp.,1941, § 8-195; R.S.1943, § 8-187; Laws 1963, c. 29, § 101, p. 175; Laws 2004, LB 884, § 6; Laws 2017, LB140, § 98. Operative date August 24, 2017.

**8-1,102 Insolvent banks; department as receiver and liquidating agent; liens dissolved; assets; transfers to defraud creditors; preferences.**

Upon the declaration of insolvency of a bank by the director, the department shall become the receiver and liquidating agent to wind up the business of that bank, and the department shall be vested with the title to all of the assets of such bank wherever the assets may be situated and whatever kind and character such assets may be, as of the date of the filing of the declaration of insolvency with the clerk of the district court of the county in which the main office of such bank is located. All levies, judgment liens, attachments, or other liens obtained through legal proceedings against such bank or its property acquired within sixty days next preceding the filing of the declaration of insolvency shall be void, and the property affected by the levy, judgment lien, attachment, or other lien obtained through legal proceedings, shall be wholly discharged and released therefrom. If at any time within sixty days prior to the taking over by the director of a bank which is later declared insolvent any transfers of the assets of such bank are made to prevent liquidation and distribution of such assets to the bank's creditors as provided in the Nebraska Banking Act or if any transfers are made so as to create a preference of one creditor over another, such transfers shall be void and the director shall be entitled to recover such assets for the benefit of the trust.

**Source:** Laws 1933, c. 18, § 54, p. 163; C.S.Supp.,1941, § 8-1,127; R.S. 1943, § 8-188; Laws 1963, c. 29, § 102, p. 176; Laws 1987, LB 2, § 15; Laws 1998, LB 1321, § 21; Laws 2017, LB140, § 99.  
Operative date August 24, 2017.

**8-1,103 Insolvent banks; liquidation; Director of Banking and Finance; powers.**

For the purpose of executing and performing any of the powers and duties hereby conferred upon him or her, the director may, in the name of the department or the insolvent bank or in his or her own name as director, prosecute and defend any and all actions and other legal proceedings and may, in the name of the department or the insolvent bank or in his or her own name as director, execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary and proper to effectuate any sale of real or personal property or sale or compromise authorized by order of the court as provided in the Nebraska Banking Act. Any deed or other instrument executed pursuant to such authority shall be valid and effectual for all purposes as though the same had been executed by the officers of the insolvent bank by authority of its board of directors.

**Source:** Laws 1933, c. 18, § 58, p. 165; C.S.Supp.,1941, § 8-1,129; R.S. 1943, § 8-189; Laws 1963, c. 29, § 103, p. 176; Laws 1987, LB 2, § 16; Laws 1998, LB 1321, § 22; Laws 2017, LB140, § 100.  
Operative date August 24, 2017.

**8-1,104 Insolvent banks; liquidation; director; collection of debts; sale or compromise of certain debts; procedure; deposit or investment of funds.**

Upon taking possession of the property and business of any bank, the director shall collect all money due to such bank and do such other acts as are necessary to conserve its assets and business and, on declaration of insolvency, he or she shall proceed to liquidate the affairs of the bank under the Nebraska

Banking Act. He or she shall collect all debts due to and belonging to the bank. If he or she desires to sell or compromise any or all bad or doubtful debts or any or all of the real and personal property of such bank, he or she shall apply to the district court of the county in which the main office of the bank is located for an order permitting such sale or compromise on such terms and in such manner as the court may direct. All money so collected by the director may be, from time to time, deposited in one or more state banks or national banks. No deposits of such money shall be made unless a pledge of assets, a guaranty bond, or both are given as security for such deposit. All depository banks are authorized to give such security. The director may invest a portion or all of such money in short-time interest-bearing securities of the federal government.

**Source:** Laws 1933, c. 18, § 67, p. 169; C.S.Supp.,1941, § 8-1,131; R.S. 1943, § 8-190; Laws 1963, c. 29, § 104, p. 177; Laws 1987, LB 2, § 17; Laws 1998, LB 1321, § 23; Laws 2017, LB140, § 101.  
Operative date August 24, 2017.

**8-1,105 Insolvent banks; reorganization or liquidation proceedings; district judge; jurisdiction.**

In any proceeding in connection with the insolvency, liquidation, or reorganization of a bank of which a district court has jurisdiction, a judge of the district court shall exercise such jurisdiction in any county in the judicial district for which he or she was appointed to perform any official act in the manner and with the same effect as he or she might exercise in the county in which the matter arose, or to which it may have been transferred, and he or she may perform any such act in chambers with the same effect as in open court.

**Source:** Laws 1925, c. 30, § 16, p. 131; C.S.1929, § 8-191; Laws 1933, c. 18, § 55, p. 163; C.S.Supp.,1941, § 8-191; R.S.1943, § 8-191; Laws 1963, c. 29, § 105, p. 178; Laws 2017, LB140, § 102.  
Operative date August 24, 2017.

**8-1,106 Insolvent banks; claims; filing; time limit.**

The director, within twenty days after the declaration of insolvency of a bank, shall file with the clerk of the district court of the county in which the main office of such bank is located, a list setting forth the name and address of each of the creditors of such bank as shown by the books thereof or who are known by the director to be creditors, and within thirty days after filing the list of creditors, he or she shall also file an order fixing the time and place for filing claims against such bank. The time fixed for filing claims shall not be more than sixty days nor less than thirty days from the date of the filing of the order, and within seven days after the filing of such order, the director shall mail to each known creditor of such bank a copy of the order and a blank form for proof of claim. The director shall also post a copy of the order on the door of the bank, and within two weeks from the date of the order he or she shall cause notice to be given by publication, in such newspapers as he or she may direct, once each week for two successive weeks, calling on all persons who may have claims against the bank to present them to the director within the time and the place provided for in the order and to make proof thereof. Such claims shall be sworn to by the creditor or his or her representative. Any claim, other than claims for deposits and exchange, not presented and filed within the time fixed by such order shall be forever barred. Claims for deposits or exchange as

shown by the books of the bank presented after the expiration of the time fixed in the order for filing claims may be allowed by the director upon a showing being made by the creditor, within six months from the date of the expiration of the time for filing claims as fixed by the order, that he or she did not have knowledge of the closing of the bank and did not receive notice within time to permit the filing of his or her claim before the time fixed for filing claims had expired.

**Source:** Laws 1923, c. 191, § 21, p. 448; C.S.1929, § 8-198; Laws 1933, c. 18, § 62, p. 167; C.S.Supp.,1941, § 8-198; R.S.1943, § 8-192; Laws 1963, c. 29, § 106, p. 178; Laws 2017, LB140, § 103.  
Operative date August 24, 2017.

**8-1,107 Insolvent banks; claims; listing and classification; notice to claimant; filing of objection; powers and duties of director.**

(1) Upon the expiration of the time fixed for presentation of claims, the director shall thoroughly investigate all claims and file with the clerk of the district court of the county in which the main office of the insolvent bank is located a complete list of all claims against which he or she knows of no defense and which, in his or her judgment, are valid, designating their priority of payment, together with a list of the claims which, in his judgment, are invalid. He or she shall also file an order allowing or rejecting such claims as classified.

(2) When the director reclassifies or rejects a claim, which rejection shall be made when he or she doubts the legality of a claim, he or she shall serve written notice of such reclassification or rejection upon the claimant by either registered or certified mail and file, with the clerk of the district court of the county in which the main office of the bank is located, an affidavit of the service of such notice, which affidavit shall be prima facie evidence of such service. Such notice shall state the time and place for the filing by claimant of his or her objections to the classification, reclassification, or rejection of his or her claim.

**Source:** Laws 1923, c. 191, § 22, p. 449; C.S.1929, § 8-199; Laws 1930, Spec. Sess., c. 6, § 9, p. 30; Laws 1933, c. 18, § 63, p. 168; C.S.Supp.,1941, § 8-199; R.S.1943, § 8-193; Laws 1957, c. 242, § 4, p. 818; R.S.1943, § 8-193; Laws 1963, c. 29, § 107, p. 179; Laws 2017, LB140, § 104.  
Operative date August 24, 2017.

**8-1,108 Insolvent banks; claims; objections to classification; hearing.**

Any person objecting to the classification of his or her claim and the order based thereon must, within thirty days of the filing of the classification and order with the clerk of the district court, begin an action in that court asking to reclassify his or her claim and to set aside the order of the director. Notice of this action shall be given by the service of a copy of the petition therein upon the director, who shall, within thirty days of such service, file his or her answer or other pleading. The court shall then set the matter for hearing at the earliest convenient date and shall try and determine the issues according to the usual procedure in matters of equity.

**Source:** Laws 1923, c. 191, § 23, p. 449; C.S.1929, § 8-1,100; Laws 1930, Spec. Sess., c. 6, § 10, p. 31; Laws 1933, c. 18, § 64, p. 168;

C.S.Supp.,1941, § 8-1,100; R.S.1943, § 8-194; Laws 1963, c. 29, § 108, p. 179; Laws 2017, LB140, § 105.  
Operative date August 24, 2017.

**8-1,109 Insolvent banks; claims; certificate of indebtedness; assignment; payments endorsed on certificate.**

Upon the allowance of a claim against an insolvent bank, the director shall, upon request of the claimant, issue and deliver to the claimant a certificate of indebtedness showing the amount of the claim, the date of the allowance thereof, and whether such claim is one having priority of payment or is a general claim. Any assignment of a claim or certificate of indebtedness shall be filed with the director and shall not be binding until so filed. Upon payment of any distribution on a claim, evidenced by a certificate of indebtedness, such certificate shall be presented and an endorsement of such payment shall be made on the certificate.

**Source:** Laws 1929, c. 38, § 22, p. 167; C.S.1929, § 8-1,101; Laws 1933, c. 18, § 65, p. 169; C.S.Supp.,1941, § 8-1,101; R.S.1943, § 8-195; Laws 1963, c. 29, § 109, p. 180; Laws 2017, LB140, § 106.  
Operative date August 24, 2017.

**8-1,110 Insolvent banks; claims; priority.**

The claims of depositors for deposits not otherwise secured and claims of holders of exchange shall have priority over all other claims, except federal, state, county, and municipal taxes. Such claims shall, at the time of the declaration of insolvency of a bank, be a first lien on all the assets of the bank from which they are due. No claim to priority shall be allowed which is based upon any evidence of indebtedness in the hands of or originally issued to any stockholder, officer, or employee of such bank and which represents money obtained by such stockholder, officer, or employee from himself, herself, or some other person, firm, corporation, or bank in lieu of or for the purpose of effecting a loan of funds to such failed bank.

**Source:** Laws 1909, c. 10, § 52, p. 92; R.S.1913, § 332; Laws 1919, c. 190, tit. V, art. XVI, § 53, p. 707; C.S.1922, § 8033; Laws 1923, c. 191, § 24, p. 450; Laws 1925, c. 30, § 12, p. 129; Laws 1929, c. 38, § 19, p. 166; Laws 1929, c. 39, § 1, p. 169; C.S.1929, § 8-1,102; Laws 1930, Spec. Sess., c. 6, § 7, p. 28; Laws 1933, c. 18, § 66, p. 169; Laws 1935, c. 16, § 2, p. 91; C.S.Supp.,1941, § 8-1,102; R.S.1943, § 8-196; Laws 1963, c. 29, § 110, p. 180; Laws 2017, LB140, § 107.  
Operative date August 24, 2017.

**8-1,111 Insolvent banks; priority; not affected by federal deposit insurance.**

When a bank whose deposits are insured by the Federal Deposit Insurance Corporation becomes insolvent, neither the deposits in the bank nor the exchange of such bank shall be deemed to be otherwise secured by reason of such insurance for purposes of section 8-1,110.

**Source:** Laws 1935, c. 16, § 2, p. 91; C.S.Supp.,1941, § 8-1,102; R.S.1943, § 8-197; Laws 1963, c. 29, § 111, p. 181; Laws 2017, LB140, § 108.  
Operative date August 24, 2017.



**8-1,112 Insolvent banks; director; payment of dividends.**

At any time after the expiration of the date fixed for the presentation of claims, the district court may by order, upon the application of the director, authorize the director to declare out of the funds remaining in his or her hands, after the payment of expenses, one or more distributions, and at the earliest possible date the director shall declare a final distribution as may be directed by the district court of the county in which the main office of such bank is located.

**Source:** Laws 1933, c. 18, § 69, p. 170; C.S.Supp.,1941, § 8-1,133; R.S. 1943, § 8-198; Laws 1963, c. 29, § 112, p. 181; Laws 2017, LB140, § 109.  
Operative date August 24, 2017.

**8-1,113 Insolvent banks; liquidation expenses; allocation; certification.**

The director shall from time to time allocate to the various banks in liquidation the expenses of the department by reason of such liquidation, other than the compensation and expense of the special deputy or assistant in charge and the fees for legal services directly incident to the bank in liquidation. The director shall certify to the various district courts of the counties in which the banks in process of liquidation are located the amount of the expenses allocated, which shall be taxed and paid as costs in the liquidation.

**Source:** Laws 1933, c. 18, § 57, p. 164; C.S.Supp.,1941, § 8-1,128; R.S. 1943, § 8-199; Laws 1963, c. 29, § 113, p. 181; Laws 2017, LB140, § 110.  
Operative date August 24, 2017.

**8-1,115 Insolvent banks; liquidation; reports to district court; dissolution of bank; cancellation of charter.**

The director shall from time to time make and file with the clerk of the district court of the county in which the main office of the insolvent bank is located a report of his or her acts of liquidation of each insolvent bank. He or she shall, upon the completion of the liquidation, file a final report, notice of which shall be given as the court may direct, and on hearing thereon and approval thereof by the court such liquidation shall be declared closed and the corporation dissolved. The director shall then cancel the charter issued to such bank pursuant to section 8-122.

**Source:** Laws 1933, c. 18, § 68, p. 170; C.S.Supp.,1941, § 8-1,132; R.S. 1943, § 8-1,101; Laws 1963, c. 29, § 115, p. 182; Laws 2017, LB140, § 111.  
Operative date August 24, 2017.

**8-1,116 Insolvent banks; stockholders; restoration of solvency; conditions.**

After the department has taken possession of any bank under the Nebraska Banking Act, the stockholders of the bank may repair its credit, restore or substitute its reserves, and otherwise place it in safe condition. Such bank shall not be permitted to reopen its business until the director, after careful investigation of its affairs, is of the opinion that its stockholders have complied with the law, that the bank's credit and funds are in all respects repaired, that its reserves are restored or are sufficiently substituted, and that it should be

permitted again to reopen for business, at which time the director may issue written permission for resumption of business under its charter.

**Source:** Laws 1909, c. 10, § 50, p. 91; R.S.1913, § 330; Laws 1919, c. 190, tit. V, art. XVI, § 51, p. 706; Laws 1921, c. 297, § 5, p. 951; C.S.1922, § 8031; C.S.1929, § 8-197; Laws 1931, c. 20, § 1, p. 92; Laws 1933, c. 18, § 61, p. 166; Laws 1941, c. 14, § 2, p. 93; C.S.Supp.,1941, § 8-197; R.S.1943, § 8-1,102; Laws 1963, c. 29, § 116, p. 182; Laws 1987, LB 2, § 18; Laws 1998, LB 1321, § 24; Laws 2017, LB140, § 112.  
Operative date August 24, 2017.

**8-1,117 Banks; impaired capital; assessments on stock to restore; preferred stock excepted.**

If the capital of a bank becomes impaired, whether the department has taken possession of the bank or not, and if stockholders representing eighty-five percent or more of the common capital stock of the bank, with a view of restoring the impaired capital, shall, with the approval of the department, authorize the board of directors of the bank to levy and collect assessments on the common capital stock in such amount as the board of directors may determine necessary for such purpose, the board of directors shall levy the assessments so authorized and shall notify all common stockholders of record of the assessments by either registered or certified mail. If any common stockholder fails to pay his or her assessment within three weeks from the date of mailing such notice, the pro rata amount of such assessment shall be a lien upon his or her common capital stock and the board of directors shall immediately sell such shares of common capital stock at public or private sale without further notice and apply the proceeds of the sale to the payment of such assessment. Any balance shall be paid to the delinquent shareholder. Nothing in this section shall be construed to authorize the levy and collections of assessments on the preferred capital stock of the bank.

**Source:** Laws 1909, c. 10, § 50, p. 91; R.S.1913, § 330; Laws 1919, c. 190, tit. V, art. XVI, § 51, p. 706; Laws 1921, c. 297, § 5, p. 951; C.S.1922, § 8031; C.S.1929, § 8-197; Laws 1931, c. 20, § 1, p. 92; Laws 1933, c. 18, § 61, p. 166; Laws 1941, c. 14, § 2, p. 93; C.S.Supp.,1941, § 8-197; R.S.1943, § 8-1,103; Laws 1963, c. 29, § 117, p. 182; Laws 2017, LB140, § 113.  
Operative date August 24, 2017.

**8-1,118 Insolvent banks; restoration of solvency; reopening for limited business; conditions; costs; new deposits treated as a trust fund; expenses.**

If the director, with a view to restoring the solvency of any bank which the department has taken possession of pursuant to law, approves a contract or plan whereby the bank is permitted to receive deposits and pay checks and do a limited banking business, entered into between the unsecured depositors and unsecured creditors representing eighty-five percent or more of the total amount of deposits and unsecured claims of such bank on the one hand and the bank or its board of directors on the other, all other depositors and unsecured creditors shall be held subject to such agreement to the same extent and with the same effect as if they had joined in the execution of the agreement, and their claims shall be treated in all other respects as if they had joined in the

execution of such agreement in the event such bank is permitted to reopen for business as limited by such contract. All deposits received after the adoption of such plan and the assets of the bank created thereby, and before the restoration of the bank to solvency, shall be a trust fund for the security and the repayment of the deposits so received and shall not be subject to the payment of any deposit, debt, claim, or demand of the bank previously created. Such money and assets shall be kept and invested in the manner directed by the director. Section 8-138 does not apply to banks operating under this section. Any county, city, village, township, or school district through its governing body, and the state through the Governor, may enter into such contract except when the funds of such county, city, village, township, or school district are adequately secured. Whenever a bank is permitted to operate under the provisions of this section, such bank shall pay all costs incurred by the department in the approval of such plan, including examiners' expenses, attorneys' fees, and clerk hire, and incurred in special examinations required by the director.

**Source:** Laws 1933, c. 16, § 1, p. 128; C.S.Supp.,1941, § 8-1,121; R.S. 1943, § 8-1,110; Laws 1963, c. 29, § 118, p. 183; Laws 2003, LB 217, § 8; Laws 2017, LB140, § 114.  
Operative date August 24, 2017.

**8-1,119 Violations; general penalty.**

Where no other punishment is provided in the Nebraska Banking Act, any person violating any provision of the act is guilty of a Class III misdemeanor.

**Source:** Laws 1909, c. 10, § 61, p. 95; R.S.1913, § 341; Laws 1919, c. 190, tit. V, art. XVI, § 61, p. 710; C.S.1922, § 8041; C.S.1929, § 8-1,104; R.S.1943, § 8-1,107; Laws 1963, c. 29, § 119, p. 184; Laws 1977, LB 40, § 53; Laws 1987, LB 2, § 19; Laws 1998, LB 1321, § 25; Laws 2017, LB140, § 115.  
Operative date August 24, 2017.

**8-1,120 Repealed. Laws 2017, LB140, § 163.**

Operative date August 24, 2017.

**8-1,121 Repealed. Laws 2017, LB140, § 163.**

Operative date August 24, 2017.

**8-1,124 Emergencies; terms, defined.**

As used in sections 8-1,124 to 8-1,129, unless the context otherwise requires:

(1) Emergency means any condition or occurrence, actual or threatened, which interferes physically with the conduct of normal business operations at one or more or all of the offices of a financial institution, or which poses an imminent or existing threat to the safety or security of persons or property, or both, including, but not limited to, fire, flood, earthquake, hurricane, wind, rain, snow storm, labor dispute and strike, power failure, transportation failure, interruption of a communication facility, shortage of fuel, housing, food, transportation, or labor, robbery or attempted robbery, actual or threatened enemy attack, epidemic or other catastrophe, riot, civil commotion, and any other act of lawlessness or violence, actual or threatened;

(2) Financial institution means a bank, savings bank, building and loan association, savings and loan association, credit union, or trust company, or any office thereof, chartered by the department;

(3) Office means any place at which a financial institution transacts its business or conducts operations related to its business; and

(4) Officers means the person or persons designated by the board of directors, supervisory committee, or other governing body of a financial institution, to act for such financial institution in an emergency or, in the absence of any such designation or of such officer or officers, the president or any other officer in charge of such financial institution or of such office or offices.

**Source:** Laws 1971, LB 523, § 1; Laws 2017, LB140, § 116.  
Operative date August 24, 2017.

**8-1,125 Emergencies; proclamation; director; effect; temporary office.**

(1) Whenever the director is of the opinion that an emergency exists, or is impending, he or she may, by proclamation, authorize any financial institution located in the affected area to close any or all of its offices. In addition, if the director is of the opinion that an emergency exists, or is impending, which affects, or may affect, a particular financial institution, or a particular office of such financial institution, but not banks located in the area generally, he or she may authorize the particular financial institution or office of the financial institution affected to close. Any office so closed shall remain closed until the director proclaims that the emergency has ended or until such time as the officers of the financial institution determine that one or more offices closed because of the emergency should reopen, whichever occurs first, and, in either event, for such further time thereafter as may reasonably be required to reopen.

(2)(a) Whenever the director authorizes a financial institution to close pursuant to subsection (1) of this section or to remain closed pursuant to section 8-1,126, he or she, in writing, may further authorize the financial institution to open a temporary office at a designated location for the period of time during which the financial institution or office is to remain closed, subject to extensions requested by the financial institution and authorized by the director, except that in no event may the director authorize a temporary office to operate for a total period of longer than thirty months.

(b) The director may authorize a financial institution to open a temporary office after consideration of (i) the ability of the financial institution to conduct its business in the area where the financial institution or the office of the financial institution was closed without opening a temporary office and (ii) the proximity of the financial institution or office of the financial institution to the proposed temporary office.

(c) The director may authorize a mobile branch to operate as a temporary office for any closed office of a financial institution other than its main office.

(d) The director may orally authorize a financial institution to open a temporary office to operate for a period no longer than four business days.

**Source:** Laws 1971, LB 523, § 2; Laws 2017, LB140, § 117.  
Operative date August 24, 2017.

**8-1,126 Emergencies; officers; powers.**

Whenever the officers of a financial institution are of the opinion that an emergency exists, or is impending, which affects, or may affect, one or more or all of a financial institution's offices, they shall have the authority, in the reasonable and proper exercise of their discretion, to determine not to open any

one or more or all of such offices on any business or banking day or, if having opened, to close any one or more or all of such offices during the continuation of such emergency, even if the director has not issued and does not issue a proclamation of emergency. Any such closed office may remain closed until such time as the officers determine that the emergency has ended, and for such further time thereafter as may reasonably be required to reopen. In no case shall such office remain closed for more than forty-eight consecutive hours, excluding other legal holidays, without requesting the approval of the director pursuant to section 8-1,125.

**Source:** Laws 1971, LB 523, § 3; Laws 2017, LB140, § 118.  
Operative date August 24, 2017.

**8-1,127 Emergency; proclamation; President of United States; Governor; effect.**

The officers of a financial institution may close any one or all of the financial institution's offices on any day, designated by proclamation of the President of the United States or the Governor, as a day or days of mourning, rejoicing, or other special observance.

**Source:** Laws 1971, LB 523, § 4; Laws 2017, LB140, § 119.  
Operative date August 24, 2017.

**8-1,128 Emergency; closing; notice; contents.**

A financial institution closing an office pursuant to the authority granted under section 8-1,126 shall give as prompt notice of its action as conditions will permit and by any means available, to the director.

**Source:** Laws 1971, LB 523, § 5; Laws 2017, LB140, § 120.  
Operative date August 24, 2017.

**8-1,129 Emergencies; laws applicable.**

(1) Any day on which a financial institution, or any one or more of its offices, is closed during all or any part of its normal business hours pursuant to the authorization granted under sections 8-1,124 to 8-1,129 shall be, with respect to such financial institution or, if not all of its offices are closed, with respect to any office or offices which are closed, a legal holiday for all purposes with respect to any financial institution business of any character. No liability, or loss of rights of any kind, on the part of any financial institution, or director, officer, or employee thereof, shall accrue or result by virtue of any closing authorized by sections 8-1,124 to 8-1,129.

(2) Sections 8-1,124 to 8-1,129 shall be construed and applied as being in addition to, and not in substitution for or limitation of, any other law of this state or of the United States authorizing the closing of a financial institution or excusing delay by a financial institution in the performance of its duties and obligations because of emergencies or conditions beyond its control or otherwise.

**Source:** Laws 1971, LB 523, § 6; Laws 2017, LB140, § 121.  
Operative date August 24, 2017.

**Cross References**

**Bank holidays**, see sections 62-301 and 62-301.01.

**8-1,131 Retirement plan, medical savings account, or health savings account, investments; bank as trustee or custodian; powers and duties; account, how treated.**

(1) All banks are qualified to act as trustee or custodian under the federal Self-Employed Individuals Tax Retirement Act of 1962, as amended, or under the terms and provisions of section 408(a) of the Internal Revenue Code, if the provisions of such retirement plan require the funds of such trust or custodianship to be invested exclusively in shares or accounts in the bank or in other banks. If any such retirement plan, within the judgment of the bank, constitutes a qualified plan under the federal Self-Employed Individuals Tax Retirement Act of 1962, or under the terms and provisions of section 408(a) of the Internal Revenue Code and the regulations promulgated thereunder at the time the trust was established and accepted by the bank, and is subsequently determined not to be such a qualified plan or subsequently ceases to be such a qualified plan, in whole or in part, the bank may continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the member and beneficiaries thereof. No bank, in respect to savings made under this subsection, shall be required to segregate such savings from other liabilities of the bank. The bank shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this subsection.

(2)(a) All banks are qualified to act as trustee or custodian of a medical savings account created within the provisions of section 220 of the Internal Revenue Code and a health savings account created within the provisions of section 223 of the Internal Revenue Code. If any such medical savings account or health savings account, within the judgment of the bank, constitutes a medical savings account under section 220 of the Internal Revenue Code or a health savings account under section 223 of the Internal Revenue Code and the regulations promulgated thereunder at the time the trust was established and accepted by the bank, and is subsequently determined not to be such a medical savings account or health savings account, in whole or in part, the bank may continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the account holder. No bank, in respect to savings made under this subsection, shall be required to segregate such savings from other liabilities of the bank. The bank shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this subsection.

(b) Except for judgments against the medical savings account holder or health savings account holder or his or her dependents for qualified medical expenses as defined under section 223(d)(2) of the Internal Revenue Code, funds credited to a medical savings account or health savings account below twenty-five thousand dollars are not susceptible to levy, execution, judgment, or other operation of law, garnishment, or other judicial enforcement and are not an asset or property of the account holder for purposes of bankruptcy law.

**Source:** Laws 1975, LB 208, § 1; Laws 1995, LB 574, § 2; Laws 1997, LB 753, § 1; Laws 1999, LB 396, § 11; Laws 2005, LB 465, § 1; Laws 2017, LB140, § 122.

Operative date August 24, 2017.

**8-1,133 Bank; business of leasing personal property; subject to rules and regulations.**

Any bank may engage, directly or indirectly, in the business of leasing personal property subject to rules and regulations as may be adopted and promulgated by the director.

**Source:** Laws 1977, LB 506, § 1; Laws 2017, LB140, § 123.  
Operative date August 24, 2017.

**8-1,134 Violations; director; powers; fines; notice; hearing; closure; emergency powers; service; procedures.**

(1) Whenever the director has reason to believe that a violation of any provision of Chapter 8 or of the Credit Union Act or any rule and regulation or order of the director has occurred, he or she may cause a written complaint to be served upon the alleged violator. The complaint shall specify the statutory provision or rule and regulation or order alleged to have been violated and the facts alleged to constitute a violation thereof and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final as to any person named in the order unless such person requests, in writing, a hearing before the director no later than ten days after the date such order is served. In lieu of such order, the director may require that the alleged violator appear before the director at a time and place specified in the notice and answer the charge complained of. The notice shall be delivered to the alleged violator or violators in accordance with subsection (4) of this section not less than ten days before the time set for the hearing.

(2) The director shall provide an opportunity for a fair hearing to the alleged violator at the time and place specified in the notice or any modification of the notice. On the basis of the evidence produced at the hearing, the director shall make findings of fact and conclusions of law and enter such order as in his or her opinion will best further the purposes of Chapter 8 or the Credit Union Act and the rules and regulations and orders of the director. Written notice of such order shall be given to the alleged violator and to any other person who appeared at the hearing and made written request for notice of the order. If the hearing is held before any person other than the director, such person shall transmit a record of the hearing together with findings of fact and conclusions of law to the director. The director, prior to entering his or her order on the basis of such record, shall provide opportunity to the parties to submit for his or her consideration exceptions to the findings or conclusions and supporting reasons for such exceptions. The order of the director shall become final and binding on all parties unless appealed to the district court of Lancaster County as provided in section 8-1,135. As part of such order, the director may impose a fine, in addition to the costs of the investigation, upon a person found to have violated any provision of Chapter 8, the Credit Union Act, or the rules and regulations or orders of the director. The fine shall not exceed ten thousand dollars per violation for the first offense and twenty-five thousand dollars per violation for a second or subsequent offense involving a violation of the same provision of Chapter 8, the Credit Union Act, the rules and regulations of the director, or the same order of the director. The fines and costs shall be in addition to all other penalties imposed by the laws of this state. The director shall collect the fines and costs and remit them to the State Treasurer. The

State Treasurer shall credit the costs to the Financial Institution Assessment Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska. If a person fails to pay the fine or costs of the investigation, a lien in the amount of the fine and costs shall be imposed upon all of the assets and property of such person in this state and may be recovered by an action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law.

(3) Whenever the director finds that an emergency exists requiring immediate action to protect the safety and soundness of the financial institutions chartered by the department, the director may, without notice or hearing, issue an order reciting the existence of an emergency and requiring that such action be taken as the director deems necessary to meet the emergency. Notwithstanding the provisions of subsection (2) of this section, the order shall be effective immediately. Any person to whom such order is directed shall comply immediately, but on application to the director shall be afforded a hearing as soon as possible and not later than ten days after such application by the affected person. On the basis of the hearing, the director shall continue the order in effect, revoke it, or modify it. This subsection shall not apply to a determination of necessary acquisition made by the department pursuant to sections 8-1506 to 8-1510.

(4) Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the director shall be served on any person affected thereby either personally or by certified mail, return receipt requested. Proof of service shall be filed with the office of the director.

Every certificate or affidavit of service made and filed as provided in this subsection shall be prima facie evidence of the facts stated in the certificate or affidavit, and a certified copy shall have the same force and effect as the original.

(5) Any hearing provided for in this section may be conducted by the director, or by any member of the department acting on behalf of the director, or the director may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the director at any time and place. A verbatim record of the proceedings of such hearings shall be taken and filed with the director, together with findings of fact and conclusions of law made by the director or hearing officer. The director may subpoena witnesses, and any witness who is subpoenaed shall receive the same fees as in civil actions in the district court and mileage as provided in section 81-1176. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the district court of Lancaster County shall have jurisdiction, upon application of the director, to issue an order requiring such person to appear and testify or produce evidence as the case may require. Failure to obey such order of the court may be punished by such court as contempt.

If requested to do so by any party concerned with such hearing, the full stenographic notes, or tapes of an electronic transcribing device, of the testimony presented at such hearing shall be taken and filed. The stenographer shall, upon the payment of the stenographer's fee allowed by the court, furnish a certified transcript of all or any part of the stenographer's notes to any party to the action requiring and requesting such notes.



(6) The director may close to the public the hearing, or any portion of the hearing, provided for in this section when he or she finds that the closure is (a) necessary to protect any person against unwarranted injury or (b) in the public interest. The director shall close no more of the public hearing than is necessary to attain the objectives of this subsection.

**Source:** Laws 1984, LB 1039, § 1; Laws 1986, LB 908, § 1; Laws 1996, LB 948, § 118; Laws 1996, LB 1053, § 6; Laws 1997, LB 137, § 8; Laws 2017, LB140, § 124.  
Operative date August 24, 2017.

**Cross References**

**Credit Union Act**, see section 21-1701.

**Financial Institution Assessment Cash Fund**, purposes, see sections 8-601 and 8-604.

**8-1,135 Appeal; procedure.**

Any person aggrieved by a final order of the director made pursuant to section 8-1,134 may appeal the order, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1984, LB 1039, § 2; Laws 1988, LB 352, § 10; Laws 2017, LB140, § 125.  
Operative date August 24, 2017.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**8-1,136 Action to enjoin and enforce compliance.**

Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of Chapter 8 or the Credit Union Act, he or she may bring an action in the name of the director and the department in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with the provisions of Chapter 8 or the Credit Union Act. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant's assets. The director shall not be required to post a bond.

**Source:** Laws 1984, LB 1039, § 3; Laws 1986, LB 908, § 2; Laws 1996, LB 948, § 119; Laws 2017, LB140, § 126.  
Operative date August 24, 2017.

**Cross References**

**Credit Union Act**, see section 21-1701.

**8-1,137 Evidence of violation; refer to prosecuting attorney.**

The director may refer such evidence as may be available concerning violations of the Nebraska Criminal Code or of any rule and regulation or order under Chapter 8 or under the Credit Union Act to the Attorney General or the proper county attorney. It shall be the duty of each county attorney or the Attorney General to whom the director reports a violation to cause appropriate proceedings to be instituted, if appropriate, without delay.

**Source:** Laws 1984, LB 1039, § 4; Laws 1986, LB 908, § 3; Laws 1996, LB 948, § 120; Laws 2017, LB140, § 127.  
Operative date August 24, 2017.

## Cross References

**Credit Union Act**, see section 21-1701.

**Nebraska Criminal Code**, see section 28-101.

**8-1,138 Violation of final order; liability; penalty.**

(1) Any person who violates any of the provisions of a final order issued by the director shall be liable to any person or entity who suffers damage proximately caused by such violation.

(2) Any person who knowingly violates any final order issued by the director pursuant to section 8-1,134 is guilty of a Class I misdemeanor.

**Source:** Laws 1984, LB 1039, § 5; Laws 2017, LB140, § 128.  
Operative date August 24, 2017.

**8-1,139 Misapplication of funds or assets; penalty.**

An officer, director, agent, or employee of a bank, trust company, building and loan association, savings and loan association, credit union, or other similar entity which is chartered, licensed, regulated, or examined by the department who willfully misapplies any of the money, funds, or credits of any such entity or any money, funds, assets, or securities entrusted to the care or custody of such entity or the custody or care of any such officer, director, agent, or employee is guilty of a Class IV felony.

**Source:** Laws 1984, LB 1039, § 6; Laws 2003, LB 131, § 5; Laws 2017, LB140, § 129.  
Operative date August 24, 2017.

**8-1,140 Federally chartered bank; bank organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.**

Notwithstanding any of the other provisions of the Nebraska Banking Act or any other Nebraska statute, any bank incorporated under the laws of this state and organized under the provisions of the act, or under the laws of this state as they existed prior to May 9, 1933, shall directly, or indirectly through a subsidiary or subsidiaries, have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2017, by a federally chartered bank doing business in Nebraska, including the exercise of all powers and activities that are permitted for a financial subsidiary of a federally chartered bank. Such rights, powers, privileges, benefits, and immunities shall not relieve such bank from payment of state taxes assessed under any applicable laws of this state.

**Source:** Laws 1999, LB 396, § 5; Laws 2000, LB 932, § 4; Laws 2001, LB 53, § 2; Laws 2002, LB 957, § 7; Laws 2003, LB 217, § 9; Laws 2004, LB 999, § 3; Laws 2005, LB 533, § 11; Laws 2006, LB 876, § 12; Laws 2007, LB124, § 6; Laws 2008, LB851, § 7; Laws 2009, LB327, § 6; Laws 2010, LB890, § 6; Laws 2011, LB74, § 1; Laws 2012, LB963, § 4; Laws 2013, LB213, § 5; Laws 2014, LB712, § 1; Laws 2015, LB286, § 1; Laws 2016, LB676, § 1; Laws 2017, LB140, § 130.  
Operative date March 30, 2017.

**ARTICLE 2**  
**TRUST COMPANIES**

## Section

8-206. Specific powers.

8-207. Appointment as fiduciary, authorized; oath.

**8-206 Specific powers.**

A trust company created under the Nebraska Trust Company Act shall have power:

(1) To receive trust funds for investment or in trust upon such terms and conditions as may be agreed upon and to purchase, hold, and lease fireproof and burglar-proof and other vaults and safes from which revenue may be derived;

(2) To accept and execute all such trusts as may be committed to it by any corporation, person, or persons, act as assignee, receiver, trustee, and depositor, and accept and execute all such trusts as may be committed or referred to it by order, judgment, or decree of any court of record;

(3) To take, accept, and hold by the order, judgment, or decree of any such court or by gift, grant, assignment, transfer, devise, or bequest any real or personal property in trust, to care for, manage, and convey the same in accordance with such trusts, and to execute and perform any and all such trusts;

(4) To act as attorney in fact for any person or corporation, public or private;

(5) To act either by itself or jointly with any natural person or persons or with any other trust company or state or national bank doing business in this state as administrator of the estate of any deceased person, as personal representative, or as conservator or guardian of the estate of any incapacitated person;

(6) To act as trustee for any person or of the estate of any deceased person under the appointment of any court of record having jurisdiction of the estate of such person;

(7) To act as agent or in an agency capacity for any person or entity, public or private;

(8) To loan money upon real estate and upon collateral security when the collateral would of itself be a legal investment for such corporation;

(9) To buy, hold, own, and sell securities issued or guaranteed by the United States Government or any authorized agency thereof, including any corporation or enterprise wholly owned directly or indirectly by the United States, or with the authority to borrow directly from the United States treasury, or securities secured by obligations of any of the foregoing, securities of any state or political subdivision thereof which possesses general powers of taxation, stock, warrants, bills of exchange, notes, mortgages, banker's acceptances, certificates of deposit in institutions whose accounts are insured by the Federal Deposit Insurance Corporation, securities issued pursuant to the Nebraska Business Development Corporation Act, and other investment securities, negotiable and nonnegotiable, except stock or other securities of any corporation organized under the Nebraska Trust Company Act;

(10) To purchase, own, or rent real estate needed in the conduct of the business and to erect thereon buildings deemed expedient and necessary, the

cost of such real estate and buildings not to exceed one hundred percent of the paid-up capital stock, except as otherwise approved in writing by the director, and to purchase, own, and improve such other real estate as it may be required to bid in under foreclosure or in payment of other debts;

(11) To borrow money, to execute and issue its notes payable at a future date, and to pledge its real estate, mortgages, or other securities therefor. With the approval of the Director of Banking and Finance, any trust company may at any time, through action of its board of directors and without requiring any action of its stockholders, issue and sell its capital notes or debentures. Such capital notes or debentures shall be subordinate and subject to the claims of trustors and beneficiaries of estates and trusts and may be subordinated and subject to the claims of other creditors. The holders of such capital notes or debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of the trust company and shall not be held liable for assessments to restore impairments in the capital of the trust company as may be from time to time determined by the director; and

(12) To perform all acts and exercise all powers connected with, belonging to or incident to, or necessary for the full and complete exercise and discharge of the rights, powers, and responsibilities granted in the Nebraska Trust Company Act, and all provisions of the act shall be liberally construed. None of the powers hereby granted shall extend to or be construed to authorize any such corporation to accept deposits or conduct the business of banking as defined in the Nebraska Banking Act.

**Source:** Laws 1911, c. 31, § 6, p. 189; R.S.1913, § 743; Laws 1919, c. 190, tit. V, art. XVIII, § 6, p. 719; C.S.1922, § 8068; Laws 1927, c. 35, § 2, p. 160; C.S.1929, § 8-206; Laws 1933, c. 18, § 74, p. 172; C.S.Supp.,1941, § 8-206; R.S.1943, § 8-206; Laws 1959, c. 263, § 1, p. 919; Laws 1967, c. 22, § 1, p. 124; Laws 1986, LB 909, § 3; Laws 1986, LB 1177, § 1; Laws 1993, LB 81, § 20; Laws 1998, LB 1321, § 38; Laws 2005, LB 533, § 12; Laws 2017, LB140, § 131.

Operative date August 24, 2017.

#### Cross References

Nebraska Banking Act, see section 8-101.02.

Nebraska Business Development Corporation Act, see section 21-2101.

### 8-207 Appointment as fiduciary, authorized; oath.

Courts of this state may appoint a trust company receiver, assignee, trustee, guardian, conservator, personal representative, custodian, or special administrator. When a trust company is so appointed and an oath is required to be made, whether in order to qualify or for any other purpose, the president, vice president, secretary, or trust officer may, on behalf of the trust company, make and subscribe the required oath.

**Source:** Laws 1911, c. 31, § 7, p. 191; R.S.1913, § 744; Laws 1919, c. 190, tit. V, art. XVIII, § 7, p. 720; C.S.1922, § 8069; C.S.1929, § 8-207; R.S.1943, § 8-207; Laws 1947, c. 13, § 4, p. 78; Laws 1986, LB 909, § 4; Laws 1993, LB 81, § 21; Laws 2017, LB140, § 132.

Operative date August 24, 2017.

## ARTICLE 3

## BUILDING AND LOAN ASSOCIATIONS

## Section

- 8-318. Stock; share account; deposits; withdrawal methods authorized; investments by fiduciaries; rights; retirement plan, investments; building and loan association as trustee or custodian; powers and duties.
- 8-355. Federal savings and loan; associations organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

**8-318 Stock; share account; deposits; withdrawal methods authorized; investments by fiduciaries; rights; retirement plan, investments; building and loan association as trustee or custodian; powers and duties.**

(1)(a) Shares of stock in any association, or in any federal savings and loan association incorporated under the provisions of the federal Home Owners' Loan Act of 1933, with its principal office and place of business in this state, may be subscribed for, held, transferred, surrendered, withdrawn, and forfeited and payments thereon received and receipted for by any person, regardless of age, in the same manner and with the same binding effect as though such person were of the age of majority, except that a minor or his or her estate shall not be bound on his or her subscription to stock except to the extent of payments actually made thereon.

(b) Whenever a share account is accepted by any building and loan association in the name of any person, regardless of age, the deposit may be withdrawn by the shareholder by any of the following methods:

(i) Check or other instrument in writing. The check or other instrument in writing constitutes a receipt or acquittance if the check or other instrument in writing is signed by the shareholder and constitutes a valid release in discharge to the building and loan association for all payments so made; or

(ii) Electronic means through:

(A) Preauthorized direct withdrawal;

(B) An automatic teller machine;

(C) A debit card;

(D) A transfer by telephone;

(E) A network, including the Internet; or

(F) Any electronic terminal, computer, magnetic tape, or other electronic means.

(c) This section shall not be construed to affect the rights, liabilities, or responsibilities of participants in an electronic fund transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., as it existed on January 1, 2017, and shall not affect the legal relationships between a minor and any person other than the building and loan association.

(2) All trustees, guardians, personal representatives, administrators, and conservators appointed by the courts of this state may invest and reinvest in, acquire, make withdrawals in whole or in part, hold, transfer, or make new or additional investments in or transfers of shares of stock in any (a) building and loan association organized under the laws of the State of Nebraska or (b) federal savings and loan association incorporated under the provisions of the

federal Home Owners' Loan Act of 1933, having its principal office and place of business in this state, without an order of approval from any court.

(3) Trustees created solely by the terms of a trust instrument may invest in, acquire, hold, and transfer such shares, and make withdrawals, in whole or in part, therefrom, without any order of court, unless expressly limited, restricted, or prohibited therefrom by the terms of such trust instrument.

(4) All building and loan associations referred to in this section are qualified to act as trustee or custodian within the provisions of the federal Self-Employed Individuals Tax Retirement Act of 1962, as amended, or under the terms and provisions of section 408(a) of the Internal Revenue Code, if the provisions of such retirement plan require the funds of such trust or custodianship to be invested exclusively in shares or accounts in the association or in other associations. If any such retirement plan, within the judgment of the association, constitutes a qualified plan under the federal Self-Employed Individuals Tax Retirement Act of 1962, or under the terms and provisions of section 408(a) of the Internal Revenue Code, and the regulations promulgated thereunder at the time the trust was established and accepted by the association, is subsequently determined not to be such a qualified plan or subsequently ceases to be such a qualified plan, in whole or in part, the association may continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the member and beneficiaries thereof. No association, in respect to savings made under this section, shall be required to segregate such savings from other assets of the association. The association shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this section.

**Source:** Laws 1899, c. 17, § 7, p. 88; R.S.1913, § 492; Laws 1919, c. 190, tit. V, art. XIX, § 8, p. 726; C.S.1922, § 8090; C.S.1929, § 8-308; Laws 1939, c. 4, § 1, p. 62; C.S.Supp.,1941, § 8-308; R.S.1943, § 8-318; Laws 1953, c. 11, § 1, p. 76; Laws 1955, c. 11, § 1, p. 77; Laws 1971, LB 375, § 1; Laws 1975, LB 208, § 2; Laws 1986, LB 909, § 8; Laws 1995, LB 574, § 3; Laws 2005, LB 533, § 16; Laws 2016, LB760, § 3; Laws 2017, LB140, § 133.  
Operative date August 24, 2017.

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

Notwithstanding any of the provisions of Chapter 8, article 3, or any other Nebraska statute, except as provided in section 8-345.02, any association incorporated under the laws of the State of Nebraska and organized under the provisions of such article shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2017, by a federal savings and loan association doing business in Nebraska. Such rights, powers, privileges, benefits, and immunities shall not relieve such association from payment of state taxes assessed under any applicable laws of this state.

**Source:** Laws 1971, LB 185, § 1; Laws 1972, LB 1288, § 1; Laws 1973, LB 351, § 1; Laws 1974, LB 784, § 1; Laws 1975, LB 201, § 1; Laws 1976, LB 763, § 2; Laws 1977, LB 224, § 1; Laws 1978, LB 717, § 6; Laws 1979, LB 154, § 2; Laws 1980, LB 865, § 1; Laws 1981, LB 71, § 1; Laws 1982, LB 646, § 1; Laws 1983, LB 144, § 1; Laws 1984, LB 923, § 1; Laws 1985, LB 128, § 1; Laws

1986, LB 1052, § 1; Laws 1987, LB 115, § 1; Laws 1988, LB 858, § 1; Laws 1989, LB 207, § 1; Laws 1990, LB 1016, § 1; Laws 1991, LB 98, § 1; Laws 1992, LB 470, § 4; Laws 1992, LB 985, § 1; Laws 1993, LB 288, § 1; Laws 1994, LB 876, § 1; Laws 1995, LB 41, § 1; Laws 1996, LB 949, § 1; Laws 1997, LB 35, § 1; Laws 1998, LB 1321, § 67; Laws 1999, LB 396, § 12; Laws 2000, LB 932, § 16; Laws 2001, LB 53, § 6; Laws 2002, LB 957, § 8; Laws 2003, LB 217, § 11; Laws 2004, LB 999, § 4; Laws 2005, LB 533, § 19; Laws 2006, LB 876, § 13; Laws 2007, LB124, § 7; Laws 2008, LB851, § 11; Laws 2009, LB327, § 9; Laws 2010, LB890, § 8; Laws 2011, LB74, § 2; Laws 2012, LB963, § 11; Laws 2013, LB213, § 8; Laws 2014, LB712, § 2; Laws 2015, LB286, § 2; Laws 2016, LB676, § 2; Laws 2017, LB140, § 134.

Operative date March 30, 2017.

## ARTICLE 6

### ASSESSMENTS AND FEES

#### Section

- 8-601. Director of Banking and Finance; employees; financial institutions; levy of assessment authorized.
- 8-602. Department of Banking and Finance; services; schedule of fees.
- 8-603. Assessments, fees, and money collected by Director of Banking and Finance; use.

#### **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 the Credit Union Act, Delayed Deposit Services Licensing Act, Interstate Branching and Merger Act, Interstate Trust Company Office Act, Nebraska Bank Holding Company Act of 1995, Nebraska Banking Act, Nebraska Installment Loan Act, Nebraska Installment Sales Act, Nebraska Money Transmitters Act, Nebraska Trust Company Act, and Residential Mortgage Licensing Act; Chapter 8, articles 3, 5, 6, 7, 8, 13, 14, 15, 16, 19, 20, 24, and 25; and Chapter 45, articles 1 and 2. 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; Laws 2013, LB616, § 49; Laws 2017, LB140, § 135.

Operative date August 24, 2017.

## Cross References

**Credit Union Act**, see section 21-1701.  
**Delayed Deposit Services Licensing Act**, see section 45-901.  
**Interstate Branching and Merger Act**, see section 8-2101.  
**Interstate Trust Company Office Act**, see section 8-2301.  
**Nebraska Bank Holding Company Act of 1995**, see section 8-908.  
**Nebraska Banking Act**, see section 8-101.02.  
**Nebraska Installment Loan Act**, see section 45-1001.  
**Nebraska Installment Sales Act**, see section 45-334.  
**Nebraska Money Transmitters Act**, see section 8-2701.  
**Nebraska Trust Company Act**, see section 8-201.01.  
**Residential Mortgage Licensing Act**, see section 45-701.

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

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

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

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

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

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

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

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

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

(8) For investigating the applications required by sections 8-117, 8-120, 8-331, and 8-2402 and the documents required by section 8-201, the cost of such examination, investigation, and inspection, including all legal expenses and the cost of any hearing transcript, with a minimum fee under (a) sections 8-117, 8-120, and 8-2402 of two thousand five hundred dollars, (b) section 8-331 of two thousand dollars, and (c) section 8-201 of one thousand dollars. The department may require the applicant to procure and give a surety bond in such principal amount as the department may determine and conditioned for the payment of the fees provided in this subdivision;

(9) For the handling of pledged securities as provided in sections 8-210 and 8-2727 at the time of the initial deposit of such securities, one dollar and fifty cents for each thousand dollars of securities deposited and a like amount on or before January 15 each year thereafter. The fees shall be paid by the entity pledging the securities;



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

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

(12) For investigating an application for approval to establish or acquire a branch pursuant to section 8-157 or 8-2103 or to establish a mobile branch pursuant to section 8-157, two hundred fifty dollars;

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

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

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

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

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

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

(19) For investigating an applicant under section 8-1513, five thousand dollars; and

(20) For investigating a request to extend a conditional bank charter under section 8-117, one thousand dollars.

**Source:** Laws 1937, c. 20, § 2, p. 129; C.S.Supp., 1941, § 8-702; R.S. 1943, § 8-602; Laws 1957, c. 10, § 5, p. 132; Laws 1961, c. 15, § 8, p. 113; Laws 1967, c. 23, § 2, p. 127; Laws 1969, c. 43, § 1, p. 252; Laws 1972, LB 1194, § 1; Laws 1973, LB 164, § 21; Laws 1976, LB 561, § 3; Laws 1987, LB 642, § 1; Laws 1992, LB 470, § 5; Laws 1992, LB 757, § 11; Laws 1993, LB 81, § 54; Laws 1995, LB 599, § 4; Laws 1998, LB 1321, § 68; Laws 1999, LB 396, § 13; Laws 2000, LB 932, § 17; Laws 2002, LB 1089, § 7; Laws 2002, LB 1094, § 7; Laws 2003, LB 131, § 8; Laws 2003, LB 217, § 14; Laws 2004, LB 999, § 5; Laws 2005, LB 533, § 20; Laws 2007, LB 124, § 9; Laws 2009, LB 327, § 10; Laws 2010, LB 891, § 3; Laws 2011, LB 74, § 3; Laws 2012, LB 963, § 12; Laws 2013, LB 616, § 50; Laws 2017, LB 140, § 136.

Operative date August 24, 2017.

**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. Fines collected by the director under such laws shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 2007, LB124, § 10; Laws 2017, LB140, § 137.  
Operative date August 24, 2017.

**ARTICLE 7**

**STATE-FEDERAL COOPERATION ACTS; CAPITAL NOTES**

(a) FEDERAL BANKING ACT OF 1933

Section

8-701. Banking institution; definition.

8-702. Banking institutions; maintain membership in Federal Deposit Insurance Corporation; automatic forfeiture of charter; prohibited acts; penalty.

(c) FEDERAL HOME LOAN BANK ACT

8-716. Federal Home Loan Bank members; tax exemption prohibited.

(a) FEDERAL BANKING ACT OF 1933

**8-701 Banking institution; definition.**

For purposes of sections 8-701 to 8-709, banking institution means any bank, stock savings bank, mutual savings bank, building and loan association, or savings and loan association, which is now or may hereafter be organized under the laws of this state.

**Source:** Laws 1935, c. 8, § 1, p. 72; C.S.Supp.,1941, § 8-401; Laws 2003, LB 217, § 15; Laws 2005, LB 533, § 21; R.S.1943, § 8-701; Laws 2017, LB140, § 138.  
Operative date August 24, 2017.

**8-702 Banking institutions; maintain membership in Federal Deposit Insurance Corporation; automatic forfeiture of charter; prohibited acts; penalty.**

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

(2) The charter of any banking institution which fails to maintain membership in the Federal Deposit Insurance Corporation shall be automatically forfeited and such banking institution shall be liquidated and dissolved, either voluntarily by its board of directors under the supervision of the department or involuntarily by the department as in cases of insolvency. Any banking institution whose charter is automatically forfeited under the provisions of this subsection which continues to engage in the business for which it had been chartered after such forfeiture, as well as the directors and officers thereof, is guilty of a Class III felony.

**Source:** Laws 1935, c. 8, § 2, p. 73; C.S.Supp.,1941, § 8-402; R.S.1943, § 8-702; Laws 1963, c. 31, § 2, p. 190; Laws 1983, LB 252, § 5; Laws 1984, LB 899, § 3; Laws 2005, LB 533, § 22; Laws 2009, LB328, § 2; Laws 2010, LB892, § 1; Laws 2011, LB75, § 1; Laws 2013, LB213, § 9; Laws 2017, LB140, § 139.  
Operative date August 24, 2017.

#### (c) FEDERAL HOME LOAN BANK ACT

##### **8-716 Federal Home Loan Bank members; tax exemption prohibited.**

No institution incorporated under the laws of this state which is or becomes a member of a Federal Home Loan Bank shall be exempt from any taxes of this state, including any contributions required to be paid under sections 48-648 to 48-654.

**Source:** Laws 1937, c. 51, § 3, p. 214; C.S.Supp.,1941, § 8-603; R.S.1943, § 8-716; Laws 1991, LB 77, § 3; Laws 2017, LB172, § 1.  
Operative date January 1, 2018.

### ARTICLE 8

#### PERSONAL LOANS BY BANKS AND TRUST COMPANIES

##### Section

- 8-815. Terms, defined.
- 8-816. Repealed. Laws 2017, LB140, § 163.
- 8-819. Repealed. Laws 2017, LB140, § 163.
- 8-820. Personal loans; credit cards; interest; service fee; fee in lieu of interest.
- 8-822. Personal loans; method of computation; prepayment; rebates; delinquency charges.
- 8-826. Personal loans; duties of department.
- 8-827. Repealed. Laws 2017, LB140, § 163.
- 8-828. Personal loans; bank; purchasing and discounting commercial, negotiable, or installment paper.

##### **8-815 Terms, defined.**

As used in sections 8-815 to 8-829, unless the context otherwise requires:

- (1) Department means the Department of Banking and Finance;
- (2) Bank means the banks and trust companies organized under the laws of this state, and national banking associations doing business in this state and shall include national banking associations;
- (3) Personal loan means a loan, and the contract evidencing the same, which is repayable, pursuant to a contract or understanding, in two or more equal or unequal installments, and within one hundred forty-five months, but shall not include any loan on which the interest does not exceed sixteen percent per

annum. Personal loan includes loans for the purchase of mobile homes even though the loan is not repayable within one hundred forty-five months. Personal loan includes loans or advances initiated by credit card or other type of transaction card, including, but not limited to, those loan transactions initiated through electronic impulse; and

(4) Transaction card means a device or means used to access a prearranged revolving credit plan account.

**Source:** Laws 1965, c. 31, § 1, p. 213; Laws 1973, LB 141, § 1; Laws 1974, LB 721, § 4; Laws 1980, LB 276, § 3; Laws 1981, LB 214, § 3; Laws 1987, LB 332, § 1; Laws 2002, LB 1094, § 8; Laws 2003, LB 217, § 16; Laws 2017, LB140, § 140.

Operative date August 24, 2017.

**8-816 Repealed. Laws 2017, LB140, § 163.**

Operative date August 24, 2017.

**8-819 Repealed. Laws 2017, LB140, § 163.**

Operative date August 24, 2017.

**8-820 Personal loans; credit cards; interest; service fee; fee in lieu of interest.**

Subject to the provisions of sections 8-815 to 8-829, any bank may contract for and receive, on any personal loan, charges at a rate not exceeding nineteen percent simple interest per year. In the case of loans initiated by credit card or other type of transaction card, the rate may be any amount agreed to by the parties. Any bank acquired pursuant to sections 8-1512 and 8-1513 may also charge commercially reasonable fees for service and use of a credit card or other type of transaction card on a per transaction and monthly or annual basis. For purposes of this section, section 85 of the National Bank Act, 12 U.S.C. 85, and section 522 of the Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U.S.C. 1831d, all interest, charges, fees, and other amounts permitted under sections 8-815 to 8-829 for loans initiated by credit card or other type of transaction card shall be deemed to be, and may be charged and collected as, interest by the bank, and all other terms and conditions of the agreement between the bank and the borrower that are not prohibited by such sections shall be deemed material to the determination of interest. Notwithstanding the provisions of this section, in the case of loans not initiated by credit card or other type of transaction card, a bank may charge a minimum fee of up to seven dollars and fifty cents in lieu of interest on personal loans and reasonable loan service costs as defined in subdivision (2) of section 45-101.02. Such loan service costs shall not be construed as interest.

**Source:** Laws 1965, c. 31, § 6, p. 214; Laws 1973, LB 164, § 23; Laws 1980, LB 276, § 4; Laws 1981, LB 150, § 1; Laws 1983, LB 454, § 1; Laws 1984, LB 1076, § 1; Laws 1988, LB 913, § 1; Laws 1993, LB 423, § 4; Laws 2017, LB140, § 141.

Operative date August 24, 2017.

**8-822 Personal loans; method of computation; prepayment; rebates; delinquency charges.**

(1) Charges under section 8-820 shall be computed by application of the rate charged to the outstanding principal balance for the number of days actually elapsed without adding any additional charges, except that at the time the loan

is made charges may be computed as a percentage per month of unpaid principal balances for the number of days elapsed on the assumption that the unpaid principal balance will be reduced, as provided in the loan contract, and such charges may be included in the scheduled installments. In the case of loans initiated by credit card or other type of transaction card, charges may be computed in any other manner agreed to by the parties and may include compounding of fees and charges.

(2) If a loan is prepaid in full by cash, a new loan, or otherwise after the first installment due date, the borrower shall receive a rebate of an amount which shall be not less than the amount obtained by applying to the unpaid principal balances as originally scheduled or, if deferred, as deferred, for the period following prepayment, according to the actuarial method, the annual percentage rate previously stated to the borrower pursuant to the federal Consumer Credit Protection Act. The licensee may round the annual percentage rate to the nearest one-half of one percent if such procedure is not consistently used to obtain a greater yield than would otherwise be permitted. Any default and deferment charges which are due and unpaid may be deducted from any rebate. No rebate shall be required for any partial prepayment. No rebate of less than one dollar need be made. Acceleration of the maturity of the contract shall not in itself require a rebate. If judgment is obtained before the final installment date the contract balance shall be reduced by the rebate which would be required for prepayment in full as of the date judgment is obtained.

(3) The charges retained by the bank may be increased to the extent that delinquency charges are computed on earned charges in accordance with the next succeeding sentence. Delinquency charges on any scheduled installment or portion thereof, if contracted for, may be taken, or in lieu thereof, interest after maturity on each such installment not exceeding the highest permissible interest rate.

**Source:** Laws 1965, c. 31, § 8, p. 215; Laws 1973, LB 164, § 24; Laws 1974, LB 626, § 2; Laws 1980, LB 279, § 2; Laws 1981, LB 214, § 4; Laws 1997, LB 137, § 10; Laws 2000, LB 1125, § 2; Laws 2017, LB140, § 142.

Operative date August 24, 2017.

#### **8-826 Personal loans; duties of department.**

(1) The department shall:

(a) Be responsible for obtaining proper administration of sections 8-815 to 8-829 and take or cause to be taken such lawful steps as may be necessary and appropriate for the enforcement thereof; and

(b) Arrange for investigation and examination of the papers and records, pertaining to loans made under section 8-820, for the purpose of discovering violations of sections 8-815 to 8-829 or securing information lawfully required under it.

(2) The Director of Banking and Finance may adopt and promulgate rules and regulations to carry out and obtain compliance with sections 8-815 to 8-829.

**Source:** Laws 1965, c. 31, § 12, p. 218; Laws 1978, LB 641, § 3; Laws 2017, LB140, § 143.

Operative date August 24, 2017.

**8-827 Repealed. Laws 2017, LB140, § 163.**

Operative date August 24, 2017.

**8-828 Personal loans; bank; purchasing and discounting commercial, negotiable, or installment paper.**

Nothing contained in sections 8-815 to 8-826 shall be construed as preventing a bank from purchasing or discounting from established business concerns any commercial, negotiable or installment paper, or as preventing any such bank from accepting from, or requiring such persons selling or offering to discount such instruments to execute, contracts guaranteeing the ultimate collection of all of such items so sold or discounted or requiring such persons to assume the burden of making collections of the individual items so sold as agent of the bank.

**Source:** Laws 1965, c. 31, § 14, p. 218; Laws 2017, LB140, § 144.

Operative date August 24, 2017.

**ARTICLE 11****SECURITIES ACT OF NEBRASKA**

- Section  
8-1101. Terms, defined.  
8-1101.01. Federal rules and regulations adopted under the Investment Advisors Act of 1940 or the Securities Act of 1933, defined.  
8-1102. Fraudulent and other prohibited practices.  
8-1103. Broker-dealers, issuer-dealers, agents, investment advisers, and investment adviser representatives; registration; procedure; exceptions; conditions; renewal; fees; accounts and other records; revocation or withdrawal of registration; when; powers of director regarding persons engaged or engaging in securities business.  
8-1106. Registration by coordination.  
8-1107. Registration by qualification.  
8-1108. Registration of securities; requirements; fees; effective date; reports; director, powers.  
8-1108.01. Securities; sale without registration; cease and desist order; fine; lien; hearing.  
8-1109. Registration of securities; denial, suspension, or revocation; grounds.  
8-1109.01. Registration of securities; denial, suspension, or revocation; additional grounds.  
8-1109.02. Registration of securities; order of denial, suspension, or revocation; notice; request for hearing; modification of order.  
8-1110. Securities exempt from registration.  
8-1111. Transactions exempt from registration.  
8-1115. Investigations; subpoena; director; powers.  
8-1116. Violations; injunction; receiver; appointment; additional court orders authorized.  
8-1117. Violations; penalty.  
8-1118. Violations; damages; statute of limitations.  
8-1120. Administration of act; Director of Banking and Finance; powers and duties; use of information for personal benefit prohibited; Securities Act Cash Fund; created; use; investment; transfers; document filed, when.  
8-1122.01. Federal limits rejected.  
8-1123. Act, how cited.

**8-1101 Terms, defined.**

For purposes of the Securities Act of Nebraska, unless the context otherwise requires:

(1) Agent means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities,

but agent does not include an individual who represents (a) an issuer in (i) effecting a transaction in a security exempted by subdivision (6), (7), or (8) of section 8-1110, (ii) effecting certain transactions exempted by section 8-1111, (iii) effecting transactions in a federal covered security as described in section 18(b)(3) of the Securities Act of 1933, or (iv) effecting transactions with existing employees, limited liability company members, partners, or directors of the issuer or any of its subsidiaries if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state or (b) a broker-dealer in effecting transactions described in section 15(h)(2) of the Securities Exchange Act of 1934. A partner, limited liability company member, officer, or director of a broker-dealer is an agent only if he or she otherwise comes within this definition;

(2) Broker-dealer means any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. Broker-dealer does not include (a) an issuer-dealer, agent, bank, savings institution, or trust company, (b) an issuer effecting a transaction in its own security exempted by subdivision (5)(a), (b), (c), (d), (e), or (f) of section 8-1110 or which qualifies as a federal covered security pursuant to section 18(b)(1) of the Securities Act of 1933, (c) a person who has no place of business in this state if he or she effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, credit unions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, (d) a person who has no place of business in this state if during any period of twelve consecutive months he or she does not direct more than five offers to sell or to buy into this state in any manner to persons other than those specified in subdivision (2)(c) of this section, or (e) a person who is a resident of Canada and who has no office or other physical presence in Nebraska if the following conditions are satisfied: (i) The person must be registered with, or be a member of, a securities self-regulatory organization in Canada or a stock exchange in Canada; (ii) the person must maintain, in good standing, its provisional or territorial registration or membership in a securities self-regulatory organization in Canada, or stock exchange in Canada; (iii) the person effects, or attempts to effect, (A) a transaction with or for a Canadian client who is temporarily present in this state and with whom the Canadian broker-dealer had a bona fide customer relationship before the client entered this state or (B) a transaction with or for a Canadian client in a self-directed tax advantaged retirement plan in Canada of which that client is the holder or contributor; and (iv) the person complies with all provisions of the Securities Act of Nebraska relating to the disclosure of material information in connection with the transaction;

(3) Department means the Department of Banking and Finance. Director means the Director of Banking and Finance of the State of Nebraska except as further provided in section 8-1120;

(4) Federal covered adviser means a person who is (a) registered under section 203 of the Investment Advisers Act of 1940 or (b) is excluded from the definition of investment adviser under section 202 of the Investment Advisers Act of 1940;

(5) Federal covered security means any security described as a covered security under section 18(b) of the Securities Act of 1933 or rules and regulations under the act;

(6) Guaranteed means guaranteed as to payment of principal, interest, or dividends;

(7) Investment adviser means any person who for compensation engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities. Investment adviser also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. Investment adviser does not include (a) an investment adviser representative, (b) a bank, savings institution, or trust company, (c) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession, (d) a broker-dealer or its agent whose performance of these services is solely incidental to its business as a broker-dealer and who receives no special compensation for them, (e) an issuer-dealer, (f) a publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, by electronic means, or otherwise which does not consist of the rendering of advice on the basis of the specific investment situation of each client, (g) a person who has no place of business in this state if (i) his or her only clients in this state are other investment advisers, federal covered advisers, broker-dealers, banks, savings institutions, credit unions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during the preceding twelve-month period, he or she has had five or fewer clients who are residents of this state other than those persons specified in subdivision (g)(i) of this subdivision, (h) any person that is a federal covered adviser, or (i) such other persons not within the intent of this subdivision as the director may by rule and regulation or order designate;

(8) Investment adviser representative means any partner, limited liability company member, officer, or director or any person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered or required to be registered under the Securities Act of Nebraska or who has a place of business located in this state and is employed by or associated with a federal covered adviser, and who (a) makes any recommendations or otherwise renders advice regarding securities, (b) manages accounts or portfolios of clients, (c) determines which recommendation or advice regarding securities should be given, (d) solicits, offers, or negotiates for the sale of or sells investment advisory services, or (e) supervises employees who perform any of the foregoing;

(9) Issuer means any person who issues or proposes to issue any security, except that (a) with respect to certificates of deposit, voting-trust certificates, or



collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued and (b) with respect to a fractional or pooled interest in a viatical settlement contract, issuer means the person who creates, for the purpose of sale, the fractional or pooled interest. In the case of a viatical settlement contract that is not fractionalized or pooled, issuer means the person effecting a transaction with a purchaser of such contract;

(10) Issuer-dealer means (a) any issuer located in the State of Nebraska or (b) any issuer which registered its securities by qualification who proposes to sell to the public of the State of Nebraska the securities that it issues without the benefit of another registered broker-dealer. Such securities shall have been approved for sale in the State of Nebraska pursuant to section 8-1104;

(11) Nonissuer means not directly or indirectly for the benefit of the issuer;

(12) Person means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(13) Sale or sell includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value. Offer or offer to sell includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock shall be considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, shall be considered to include an offer of the other security;

(14) Securities Act of 1933, Securities Exchange Act of 1934, Investment Advisers Act of 1940, Investment Company Act of 1940, and Commodity Exchange Act means the acts as they existed on January 1, 2017;

(15) Security means any note, stock, treasury stock, bond, debenture, units of beneficial interest in a real estate trust, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, viatical settlement contract or any fractional or pooled interest in such contract, membership interest in any limited liability company organized under Nebraska law or any other jurisdiction unless otherwise excluded from this definition, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, in general any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. Security does not include any insurance or endowment policy or annuity contract issued by an

insurance company. Security also does not include a membership interest in a limited liability company when all of the following exist: (a) The member enters into a written commitment to be engaged actively and directly in the management of the limited liability company; and (b) all members of the limited liability company are actively engaged in the management of the limited liability company. For the limited purposes of determining professional malpractice insurance premiums, a security issued through a transaction that is exempted pursuant to subdivision (23) of section 8-1111 shall not be considered a security;

(16) State means any state, territory, or possession of the United States as well as the District of Columbia and Puerto Rico; and

(17) Viatical settlement contract means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of all or any portion of the death benefit or ownership of a life insurance policy or contract for consideration which is less than the expected death benefit of the life insurance policy or contract. Viatical settlement contract does not include (a) the assignment, transfer, sale, devise, or bequest of a death benefit of a life insurance policy or contract made by the viator to an insurance company or to a viatical settlement provider or broker licensed pursuant to the Viatical Settlements Act, (b) the assignment of a life insurance policy or contract to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan, or (c) the exercise of accelerated benefits pursuant to the terms of a life insurance policy or contract and consistent with applicable law.

**Source:** Laws 1965, c. 549, § 1, p. 1763; Laws 1973, LB 167, § 1; Laws 1977, LB 263, § 1; Laws 1978, LB 760, § 1; Laws 1989, LB 60, § 1; Laws 1991, LB 305, § 2; Laws 1993, LB 216, § 1; Laws 1993, LB 121, § 96; Laws 1994, LB 884, § 10; Laws 1995, LB 119, § 1; Laws 1996, LB 1053, § 7; Laws 1997, LB 335, § 1; Laws 2001, LB 52, § 43; Laws 2001, LB 53, § 19; Laws 2011, LB76, § 1; Laws 2013, LB214, § 1; Laws 2017, LB148, § 1. Effective date August 24, 2017.

#### Cross References

Viatical Settlements Act, see section 44-1101.

#### **8-1101.01 Federal rules and regulations adopted under the Investment Advisors Act of 1940 or the Securities Act of 1933, defined.**

For purposes of the Securities Act of Nebraska, federal rules and regulations adopted under the Investment Advisors Act of 1940 or the Securities Act of 1933 means such rules and regulations as they existed on January 1, 2017, except that references to Rule 147 and Rule 147A adopted under the Securities Act of 1933 shall be to such rules as published in the Federal Register on November 21, 2016.

**Source:** Laws 2017, LB148, § 2.  
Effective date August 24, 2017.

#### **8-1102 Fraudulent and other prohibited practices.**

(1) It shall be unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) It shall be unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

(a) To employ any device, scheme, or artifice to defraud any person;

(b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(c) To knowingly sell any security to or purchase any security from a client while acting as principal for his or her own account, act as a broker for a person other than the client, or knowingly effect any sale or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which he or she is acting and obtaining the consent of the client to the transaction. This subdivision shall not apply to any transaction involving a broker-dealer's client if the broker-dealer is not acting as an investment adviser in the transaction;

(d) To engage in dishonest or unethical practices as the director may define by rule and regulation or order; or

(e) In the solicitation of advisory clients, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(3) Except as may be permitted by rule and regulation or order of the director, it shall be unlawful for any investment adviser or investment adviser representative to enter into, extend, or renew any investment advisory contract:

(a) Which provides for the compensation of the investment adviser or investment adviser representative on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of any client;

(b) Unless the investment advisory contract prohibits in writing the assignment of the contract by the investment adviser or investment adviser representative without the consent of the other party to the contract; and

(c) Unless the investment advisory contract provides in writing that if the investment adviser is a partnership or a limited liability company, the other party to the contract shall be notified of any change in the membership of the partnership or limited liability company within a reasonable time after the change.

(4) Subdivision (3)(a) of this section shall not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. Assignment, as used in subdivision (3)(b) of this section, shall include any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor, except that if the investment adviser is a partnership or a limited liability company, no assignment of an investment advisory contract shall be considered to result from the death or

withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(5) It shall be unlawful for any investment adviser or investment adviser representative to take or have custody of any securities or funds of any client if:

(a) The director by rule and regulation or order prohibits the taking or custody; or

(b) In the absence of any rule and regulation or order by the director, the investment adviser or investment adviser representative fails to notify the director that he or she has or may have custody.

(6) The director may by rule and regulation or order adopt and promulgate exemptions from subdivisions (2)(c), (3)(a), (3)(b), and (3)(c) of this section when the exemptions are consistent with the public interest and are within the purposes fairly intended by the Securities Act of Nebraska.

**Source:** Laws 1965, c. 549, § 2, p. 1766; Laws 1990, LB 938, § 1; Laws 1993, LB 216, § 2; Laws 1994, LB 884, § 11; Laws 2017, LB148, § 3.

Effective date August 24, 2017.

**8-1103 Broker-dealers, issuer-dealers, agents, investment advisers, and investment adviser representatives; registration; procedure; exceptions; conditions; renewal; fees; accounts and other records; revocation or withdrawal of registration; when; powers of director regarding persons engaged or engaging in securities business.**

(1) It shall be unlawful for any person to transact business in this state as a broker-dealer, issuer-dealer, or agent, except in certain transactions exempt under section 8-1111, unless he or she is registered under the Securities Act of Nebraska. It shall be unlawful for any broker-dealer to employ an agent for purposes of effecting or attempting to effect transactions in this state unless the agent is registered. It shall be unlawful for an issuer to employ an agent unless the issuer is registered as an issuer-dealer and unless the agent is registered. The registration of an agent shall not be effective unless the agent is employed by a broker-dealer or issuer-dealer registered under the act. When the agent begins or terminates employment with a registered broker-dealer or issuer-dealer, the broker-dealer or issuer-dealer shall promptly notify the director.

(2)(a) It shall be unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless he or she is registered under the act.

(b) Except with respect to federal covered advisers whose only clients are those described in subdivision (7)(g)(i) of section 8-1101, it shall be unlawful for any federal covered adviser to conduct advisory business in this state unless such person files with the director the documents which are filed with the Securities and Exchange Commission, as the director may by rule and regulation or order require, a consent to service of process, and payment of the fee prescribed in subsection (6) of this section prior to acting as a federal covered adviser in this state.

(c)(i) It shall be unlawful for any investment adviser required to be registered under the Securities Act of Nebraska to employ an investment adviser representative unless the investment adviser representative is registered under the act.

(ii) It shall be unlawful for any federal covered adviser to employ, supervise, or associate with an investment adviser representative having a place of business located in this state unless such investment adviser representative is registered under the Securities Act of Nebraska or is exempt from registration.

(d) The registration of an investment adviser representative shall not be effective unless the investment adviser representative is employed by a registered investment adviser or a federal covered adviser. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser shall promptly notify the director. When an investment adviser representative begins or terminates employment with a federal covered adviser, the investment adviser representative shall promptly notify the director.

(3) A broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative may apply for registration by filing with the director an application and payment of the fee prescribed in subsection (6) of this section. If the applicant is an individual, the application shall include the applicant's social security number. Registration of a broker-dealer or issuer-dealer shall automatically constitute registration of all partners, limited liability company members, officers, or directors of such broker-dealer or issuer-dealer as agents, except any partner, limited liability company member, officer, or director whose registration as an agent is denied, suspended, or revoked under subsection (9) of this section, without the filing of applications for registration as agents or the payment of fees for registration as agents. The application shall contain whatever information the director requires concerning such matters as:

(a) The applicant's form and place of organization;

(b) The applicant's proposed method of doing business;

(c) The qualifications and business history of the applicant and, in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, limited liability company member, officer, director, person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or person directly or indirectly controlling the broker-dealer or investment adviser;

(d) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(e) The applicant's financial condition and history; and

(f) Information to be furnished or disseminated to any client or prospective client if the applicant is an investment adviser.

(4)(a) If no denial order is in effect and no proceeding is pending under subsection (9) of this section, registration shall become effective at noon of the thirtieth day after an application is filed, complete with all amendments. The director may specify an earlier effective date.

(b) The director shall require as conditions of registration:

(i) That the applicant, except for renewal, and, in the case of a corporation, partnership, or limited liability company, the officers, directors, partners, or

limited liability company members pass such examination or examinations as the director may prescribe as evidence of knowledge of the securities business;

(ii) That an issuer-dealer and its agents pass an examination prescribed and administered by the department. Such examination shall be administered upon request and upon payment of an examination fee of five dollars. Any applicant for issuer-dealer registration who has satisfactorily passed any other examination approved by the director shall be exempted from this requirement upon furnishing evidence of satisfactory completion of such examination to the director;

(iii) That an issuer-dealer have a minimum net capital of twenty-five thousand dollars. In lieu of a minimum net capital requirement of twenty-five thousand dollars, the director may require an issuer-dealer to post a corporate surety bond with a surety company licensed to do business in Nebraska in an amount equal to such capital requirements. When the director finds that a surety bond with a surety company would cause an undue burden on an issuer-dealer, the director may require the issuer-dealer to post a signature bond. Every such surety or signature bond shall run in favor of Nebraska, shall provide for an action thereon by any person who has a cause of action under section 8-1118, and shall provide that no action may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118;

(iv) That a broker-dealer have such minimum net capital as the director may by rule and regulation or order require, subject to the limitations provided in section 15 of the Securities Exchange Act of 1934. In lieu of any such minimum net capital requirement, the director may by rule and regulation or order require a broker-dealer to post a corporate surety bond with a surety company licensed to do business in Nebraska in an amount equal to such capital requirement, subject to the limitations of section 15 of the Securities Exchange Act of 1934. Every such surety bond shall run in favor of Nebraska, shall provide for an action thereon by any person who has a cause of action under section 8-1118, and shall provide that no action may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118; and

(v) That an investment adviser have such minimum net capital as the director may by rule and regulation or order require, subject to the limitations of section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over such funds or securities and those investment advisers who do not. In lieu of any such minimum net capital requirement, the director may require by rule and regulation or order an investment adviser to post a corporate surety bond with a surety company licensed to do business in Nebraska in an amount equal to such capital requirement, subject to the limitations of section 222 of the Investment Advisers Act of 1940. Every such surety bond shall run in favor of Nebraska, shall provide for an action thereon by any person who has a cause of action under section 8-1118, and shall provide that no action may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118.

(c) The director may waive the requirement of an examination for any applicant who by reason of prior experience can demonstrate his or her knowledge of the securities business. Registration of a broker-dealer, agent,

investment adviser, and investment adviser representative shall be effective for a period of not more than one year and shall expire on December 31 unless renewed. Registration of an issuer-dealer shall be effective for a period of not more than one year and may be renewed as provided in this section. Notice filings by a federal covered adviser shall be effective for a period of not more than one year and shall expire on December 31 unless renewed.

(d) The director may restrict or limit an applicant as to any function or activity in this state for which registration is required under the Securities Act of Nebraska.

(5) Registration of a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative may be renewed by filing with the director or with a registration depository designated by the director prior to the expiration date such information as the director by rule and regulation or order may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative previously filed with the director by the applicant, and payment of the prescribed fee. A federal covered adviser may renew its notice filing by filing with the director prior to the expiration thereof the documents filed with the Securities and Exchange Commission, as the director by rule and regulation or order may require, a consent to service of process, and the prescribed fee.

(6) The fee for initial or renewal registration shall be two hundred fifty dollars for a broker-dealer, two hundred dollars for an investment adviser, one hundred dollars for an issuer-dealer, forty dollars for an agent, and forty dollars for an investment adviser representative. The fee for initial or renewal filings for a federal covered adviser shall be two hundred dollars. When an application is denied or withdrawn, the director shall retain all of the fee.

(7)(a) Every registered broker-dealer, issuer-dealer, and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the director may prescribe by rule and regulation or order, except as provided by section 15 of the Securities Exchange Act of 1934, in connection with broker-dealers, and section 222 of the Investment Advisers Act of 1940, in connection with investment advisers. All records so required shall be preserved for such period as the director may prescribe by rule and regulation or order.

(b) All the records of a registered broker-dealer, issuer-dealer, or investment adviser shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the director, within or without this state, as the director deems necessary or appropriate in the public interest or for the protection of investors and advisory clients. For the purpose of avoiding unnecessary duplication of examinations, the director, insofar as he or she deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. Costs of such examinations shall be borne by the registrant.

(c) Every registered broker-dealer, except as provided in section 15 of the Securities Exchange Act of 1934, and investment adviser, except as provided by section 222 of the Investment Advisers Act of 1940, shall file such financial reports as the director may prescribe by rule and regulation or order.

(d) If any information contained in any document filed with the director is or becomes inaccurate or incomplete in any material respect, a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative shall promptly file a correcting amendment or a federal covered adviser shall file a correcting amendment when such amendment is required to be filed with the Securities and Exchange Commission.

(8) With respect to investment advisers, the director may require that certain information be furnished or disseminated to clients as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the director in his or her discretion, information furnished to clients of an investment adviser that would be in compliance with the Investment Advisers Act of 1940 and the rules and regulations under such act may be used in whole or in part to satisfy the information requirement prescribed in this subsection.

(9)(a) The director may by order deny, suspend, or revoke registration of any broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative or bar, censure, or impose a fine pursuant to subsection (4) of section 8-1108.01 on any registrant or any partner, limited liability company member, officer, director, or person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director for a registrant from employment with any broker-dealer, issuer-dealer, or investment adviser if he or she finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer, issuer-dealer, or investment adviser, any partner, limited liability company member, officer, director, person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or person directly or indirectly controlling the broker-dealer, issuer-dealer, or investment adviser:

(i) Has filed an application for registration under this section which, as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(ii) Has willfully violated or willfully failed to comply with any provision of the Securities Act of Nebraska or any rule and regulation or order under the act;

(iii) Has been convicted, within the past ten years, of any misdemeanor involving a security or commodity or any aspect of the securities or commodities business or any felony;

(iv) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities or commodities business;

(v) Is the subject of an order of the director denying, suspending, or revoking registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative;

(vi) Is the subject of an adjudication or determination, after notice and opportunity for hearing, within the past ten years by a securities or commodities agency or administrator of another state or a court of competent jurisdiction that the person has willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the



Investment Company Act of 1940, the Commodity Exchange Act, or the securities or commodities law of any other state;

(vii) Has engaged in dishonest or unethical practices in the securities or commodities business;

(viii) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature, but the director may not enter an order against a broker-dealer, issuer-dealer, or investment adviser under this subdivision without a finding of insolvency as to the broker-dealer, issuer-dealer, or investment adviser;

(ix) Has not complied with a condition imposed by the director under subsection (4) of this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(x) Has failed to pay the proper filing fee, but the director may enter only a denial order under this subdivision, and he or she shall vacate any such order when the deficiency has been corrected;

(xi) Has failed to reasonably supervise his or her agents or employees, if he or she is a broker-dealer or issuer-dealer, or his or her investment adviser representatives or employees, if he or she is an investment adviser, to assure their compliance with the Securities Act of Nebraska;

(xii) Has been denied the right to do business in the securities industry, or the person's respective authority to do business in an investment-related industry has been revoked by any other state, federal, or foreign governmental agency or self-regulatory organization for cause, or the person has been the subject of a final order in a criminal, civil, injunctive, or administrative action for securities, commodities, or fraud-related violations of the law of any state, federal, or foreign governmental unit; or

(xiii) Has refused to allow or otherwise impedes the department from conducting an examination under subsection (7) of this section or has refused the department access to a registrant's office to conduct an examination under subsection (7) of this section.

(b) The director may by order bar any person from engaging in the securities business in this state if the director finds that the order is in the public interest and that the person has:

(i) Willfully violated or willfully failed to comply with any provision of the Securities Act of Nebraska or any rule and regulation or order under the act; or

(ii) Engaged in dishonest or unethical practices in the securities business, which activity at the time was subject to regulation by the Securities Act of Nebraska.

(c)(i) For purposes of subdivisions (9)(a)(vii) and (9)(b)(ii) of this section, the director may, by rule and regulation or order, determine that a violation of any provision of the fair practice or ethical rules or standards promulgated by the Securities and Exchange Commission, the Financial Industry Regulatory Authority, or a self-regulatory organization approved by the Securities and Exchange Commission, in effect on January 1, 2017, constitutes a dishonest or unethical practice in the securities or commodities business.

(ii) The director may not institute a proceeding under this section on the basis of a final judicial or administrative order made known to him or her by the applicant prior to the effective date of the registration unless the proceeding is instituted within the next ninety days following registration. For purposes of

this subdivision, a final judicial or administrative order does not include an order that is stayed or subject to further review or appeal. This subdivision shall not apply to renewed registrations.

(iii) The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this subsection. Upon the entry of the order, the director shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons therefor and that within fifteen business days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. No order may be entered under this section denying or revoking registration without appropriate prior notice to the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, and opportunity for hearing.

(10)(a) If the director finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative, is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the director may by order cancel the registration or application.

(b) If an applicant for registration does not complete the registration application and fails to respond to a notice or notices from the department to correct the deficiency or deficiencies for a period of one hundred twenty days or more after the date the department sends the initial notice to correct the deficiency, the department may deem the registration application as abandoned and may issue a notice of abandonment of the registration application to the applicant in lieu of proceedings to deny the application.

(c) Withdrawal from registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative shall become effective thirty days after receipt of an application to withdraw or within a shorter period of time as the director may determine unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a revocation or suspension proceeding is pending or instituted, withdrawal shall become effective at such time and upon such conditions as the director shall order.

**Source:** Laws 1965, c. 549, § 3, p. 1768; Laws 1973, LB 167, § 2; Laws 1977, LB 263, § 2; Laws 1989, LB 60, § 2; Laws 1990, LB 956, § 7; Laws 1991, LB 305, § 3; Laws 1993, LB 216, § 3; Laws 1993, LB 121, § 97; Laws 1994, LB 884, § 12; Laws 1997, LB 335, § 2; Laws 1997, LB 752, § 60; Laws 2000, LB 932, § 19; Laws 2001, LB 53, § 20; Laws 2003, LB 217, § 23; Laws 2017, LB148, § 4.

Effective date August 24, 2017.

**8-1106 Registration by coordination.**

(1) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 8-1108 and, if required under section 8-1112, a consent to service of process meeting the requirements of that section:

(a) One copy of the prospectus filed under the Securities Act of 1933 together with all amendments thereto;

(b) The amount of securities to be offered in this state;

(c) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(d) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;

(e) If the director by rule and regulation or order requires, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) If the director requests, any other information or copies of any other documents filed under the Securities Act of 1933; and

(g) An undertaking to forward promptly all amendments to the federal registration statement, other than an amendment which merely delays the effective date.

(3) A registration statement under this section shall automatically become effective at the moment the federal registration statement or qualification becomes effective if all the following conditions are satisfied:

(a) No stop order is in effect and no proceeding is pending under the Securities Act of 1933, as amended, or under section 8-1109;

(b) The registration statement has been on file with the director for at least ten days; and

(c) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been filed and the offering is made within those limitations. The registrant shall promptly notify the director by facsimile transmission or electronic mail of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. Price amendment means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(4) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment, the director may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until there has been compliance with

this subsection, if he or she promptly notifies the registrant by telephone or electronic mail and promptly confirms by letter sent postage prepaid when he or she notifies by telephone or electronic mail of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and posteffective amendment, the stop order shall be void as of the time of its entry.

(5) The director may by rule and regulation or order waive either or both of the conditions specified in subsections (2) and (3) of this section. If the federal registration statement or qualification becomes effective before all these conditions have been satisfied and they are not waived, the registration statement shall automatically become effective as soon as all the conditions have been satisfied.

**Source:** Laws 1965, c. 549, § 6, p. 1776; Laws 1967, c. 29, § 1, p. 142; Laws 1977, LB 263, § 3; Laws 1988, LB 795, § 3; Laws 1993, LB 216, § 4; Laws 2015, LB252, § 1; Laws 2016, LB771, § 1; Laws 2017, LB148, § 5.  
Effective date August 24, 2017.

#### **8-1107 Registration by qualification.**

(1) Any security may be registered by qualification.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 8-1108 and, if required under section 8-1112, a consent to service of process meeting the requirements of that section:

(a) With respect to the issuer and any significant subsidiary, its name, address, and form of organization, the state or foreign jurisdiction and date of its organization, the general character and location of its business, and a description of its physical properties and equipment;

(b) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions, his or her name, address, and principal occupation for the past five years, the amount of securities of the issuer held by him or her as of a specified date within ninety days of the filing of the registration statement, the remuneration paid to all such persons in the aggregate during the past twelve months, and estimated to be paid during the next twelve months, directly or indirectly, by the issuer together with all predecessors, parents and subsidiaries;

(c) With respect to any person not named in subdivision (e) of this subsection, owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in subdivision (b) of this subsection other than his or her occupation;

(d) With respect to every promoter, not named in subdivision (b) of this subsection, if the issuer was organized within the past three years, the information specified in subdivision (b) of this subsection, any amount paid to him or her by the issuer within that period or intended to be paid to him or her, and the consideration for any such payment;

(e) The capitalization and long-term debt, on both a current and a pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a

statement of the amount and kind of consideration whether in the form of cash, physical assets, services, patents, goodwill, or anything else for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(f) The kind and amount of securities to be offered, the amount to be offered in this state, the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions, the estimated aggregate underwriting and selling discounts or commissions and finders' fees including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering, the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering, the name and address of every underwriter and every recipient of a finders' fee, a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined, and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) The estimated cash proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer, the amount to be used for each purpose, the order or priority in which the proceeds will be used for the purposes stated, the amounts of any funds to be raised from other sources to achieve the purposes stated, and the sources of any such funds, and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price;

(h) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subdivision (b), (c), (d), (e) or (g) of this subsection and by any person who holds or will hold ten percent or more in the aggregate of any such options;

(i) Any adverse order, judgment or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission, and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets including any such litigation or proceeding known to be contemplated by governmental authorities;

(j) A specimen or copy of the security being registered, a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalent as currently in effect, and a copy of any indenture or other instrument covering the security to be registered;

(k) A signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered;

(l) A balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant;

(m) If a report or valuation, other than an official record that is public, is used in connection with the registration statement, a signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified the report or valuation;

(n) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed; and

(o) A copy of any prospectus or circular intended as of the effective date to be used in connection with the offering.

(3) In the case of a nonissuer distribution, information may not be required under this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(4) A registration statement under this section shall become effective when the director so orders. The director shall require as a condition of registration under this section that a prospectus containing substantially the information specified in subdivisions (a) to (m) of subsection (2) of this section be sent or given to each person to whom an offer is made before or concurrently with the first written offer made to him or her otherwise than by means of a public advertisement by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him or her as a participant in the distribution, the confirmation of any sale made by or for the account of any such person, payment pursuant to any such sale, or delivery of the security pursuant to any such sale, whichever first occurs, but the director shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or rules and regulations under such act.

**Source:** Laws 1965, c. 549, § 7, p. 1778; Laws 2017, LB148, § 6.  
Effective date August 24, 2017.

**8-1108 Registration of securities; requirements; fees; effective date; reports; director, powers.**

(1) A registration statement may be filed by the issuer, by any other person on whose behalf the offering is to be made, or by a registered broker-dealer. Any document filed under the Securities Act of Nebraska within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The director may by rule and regulation or order permit the omission of any item of information or document from any registration statement.

(2) The director may require as a condition of registration by qualification (a) that the proceeds from the sale of the registered security be impounded until the issuer receives a specified amount, (b) that the applicant comply with the Securities Act of 1933 if it appears to the director to be in the public interest or that the registered security is or will be offered in such manner as to be subject to such act, (c) such reasonable conditions, restrictions, or limitations upon the offering as may be in the public interest, or (d) that any security issued within the past three years, or to be issued, to a promoter for a consideration substantially different from the public offering price or to any person for a consideration other than cash, be delivered in escrow to him or her or to some

other depository satisfactory to him or her under an escrow agreement that the owners of such securities shall not be entitled to sell or transfer such securities or to withdraw such securities from escrow until all other stockholders who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than six percent of the initial offering price shown to the satisfaction of the director to have been actually earned on the investment in any common stock so held. The director shall not reject a depository solely because of location in another state. In case of dissolution or insolvency during the time such securities are held in escrow, the owners of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full.

(3) For the registration of securities by coordination or qualification, there shall be paid to the director a registration fee of one-tenth of one percent of the aggregate offering price of the securities which are to be offered in this state, but the fee shall in no case be less than one hundred dollars. When a registration statement is withdrawn before the effective date or a preeffective stop order is entered under section 8-1109, the director shall retain one hundred dollars of the fee. Any issuer who sells securities in this state in excess of the aggregate amount of securities registered may, at the discretion of the director and while such registration is still effective, apply to register the excess securities sold to persons within this state by paying a registration fee of three-tenths of one percent for the difference between the initial fee paid and the fee required in this subsection. Registration of the excess securities, if granted, shall be effective retroactively to the date of the existing registration.

(4) When securities are registered by coordination or qualification, they may be offered and sold by a registered broker-dealer. Every registration shall remain effective for one year or until sooner revoked by the director or sooner terminated upon request of the registrant with the consent of the director. All outstanding securities of the same class as a registered security shall be considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for one year from its effective date if any securities of the same class are outstanding.

(5) The director may require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which are being offered and sold directly by or for the account of the issuer.

(6) A registration of securities shall be effective for a period of one year or such shorter period as the director may determine.

**Source:** Laws 1965, c. 549, § 8, p. 1781; Laws 1988, LB 1157, § 1; Laws 1991, LB 305, § 4; Laws 1997, LB 335, § 4; Laws 2013, LB214, § 3; Laws 2017, LB148, § 7.

Effective date August 24, 2017.

**8-1108.01 Securities; sale without registration; cease and desist order; fine; lien; hearing.**

(1) Whenever it appears to the director that the sale of any security is subject to registration under the Securities Act of Nebraska and is being offered or has been offered for sale without such registration, he or she may order the issuer

or offerer of such security to cease and desist from the further offer or sale of such security unless and until it has been registered under the act.

(2) Whenever it appears to the director that any person is acting as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative without registration as such or acting as a federal covered adviser without making a notice filing under the act, he or she may order such person to cease and desist from such activity unless and until he or she has been registered as such or has made the required notice filing under the act.

(3) Whenever it appears to the director that any person is violating section 8-1102, he or she may order the person to cease and desist from such activity.

(4) The director may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed twenty-five thousand dollars per violation, in addition to costs of the investigation, upon a person found to have engaged in any act or practice which would constitute a violation of the act or any rule and regulation or order under the act, except that the director shall not impose a fine upon any person in connection with a transaction made pursuant to subdivision (23) of section 8-1111 for any statement of a material fact made or for an omission of a material fact required to be stated or necessary to make the statement made not misleading unless such statement or omission was made with the intent to defraud or mislead. The fine and costs shall be in addition to all other penalties imposed by the laws of this state. The director shall collect the fines and costs and remit them to the State Treasurer. The State Treasurer shall credit the costs to the Securities Act Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska. Imposition of any fine and payment of costs under this subsection may be appealed pursuant to section 8-1119. If a person fails to pay the fine or costs of the investigation referred to in this subsection, a lien in the amount of the fine and costs shall be imposed upon all of the assets and property of such person in this state and may be recovered by an action by the director and remitted to the State Treasurer. The State Treasurer shall credit the costs to the Securities Act Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska. Failure of the person to pay a fine and costs shall also constitute a forfeiture of his or her right to do business in this state under the Securities Act of Nebraska.

(5) After such an order has been made under subsection (1), (2), (3), or (4) of this section, if a request for a hearing is filed in writing within fifteen business days of the issuance of the order by the person to whom such order was directed, a hearing shall be held by the director within thirty business days after receipt of the request, unless both parties consent to a later date or the director or a hearing officer sets a later date for good cause. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order.

**Source:** Laws 1974, LB 721, § 5; Laws 1987, LB 650, § 1; Laws 1990, LB 956, § 8; Laws 1993, LB 216, § 5; Laws 1997, LB 335, § 5; Laws



2001, LB 53, § 21; Laws 2013, LB205, § 1; Laws 2017, LB148, § 8.

Effective date August 24, 2017.

**8-1109 Registration of securities; denial, suspension, or revocation; grounds.**

The director may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement to register securities by coordination if he or she finds that the order is in the public interest and that:

(1) Any such registration statement registering securities, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Any provision of the Securities Act of Nebraska or any rule and regulation or order, or condition under the act has been violated, in connection with the offering by the person filing the registration statement, the issuer, any partner, limited liability company member, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer or any underwriter;

(3) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering. The director may not institute a proceeding against an effective registration statement under this subdivision more than one year from the date of the injunction relied on, and he or she may not enter an order under this subdivision on the basis of an injunction entered under any other state act unless the injunction was based on facts which would currently constitute a ground for a stop order under this section;

(4) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by subdivision (2)(g) of section 8-1106;

(5) The applicant or registrant has failed to pay the proper registration fee. The director may enter only a denial order under this subdivision and shall vacate any such order when the deficiency has been corrected. The director may not enter an order against an effective registration statement on the basis of a fact or transaction known to him or her when the registration statement became effective;

(6) The authority of the applicant or registrant to do business has been denied or revoked by any other governmental agency;

(7) The issuer's or registrant's literature, circulars, or advertising is misleading, incorrect, incomplete, or calculated to deceive the purchaser or investor;

(8) All or substantially all the enterprise or business of the issuer, promoter, or guarantor has been found to be unlawful by a final order of a court or administrative agency of competent jurisdiction; or

(9) There is a refusal to furnish information required by the director within a reasonable time to be fixed by the director.

**Source:** Laws 1965, c. 549, § 9, p. 1783; Laws 1967, c. 29, § 2, p. 144; Laws 1973, LB 167, § 4; Laws 1977, LB 263, § 4; Laws 1987, LB 27, § 1; Laws 1993, LB 121, § 98; Laws 1994, LB 884, § 13; Laws 2013, LB214, § 5; Laws 2017, LB148, § 9.  
Effective date August 24, 2017.

**8-1109.01 Registration of securities; denial, suspension, or revocation; additional grounds.**

The director may issue an order denying effectiveness to, or suspend or revoke the effectiveness of, a registration statement to register securities by qualification if he or she finds that the conditions in subdivision (1) of section 8-1109, or if he or she finds that any of the following conditions exist:

- (1) Such order is in the public interest;
- (2) The issuer's plan of business, or the plan of financing is either unfair, unjust, inequitable, dishonest, oppressive, or fraudulent or would tend to work a fraud upon the purchaser;
- (3) The issuer's or registrant's literature, circulars, or advertising is misleading, incorrect, incomplete, or calculated to deceive the purchaser or investor;
- (4) The securities offered or to be offered, or issued or to be issued, in payment for property, patents, formulas, goodwill, promotion, or intangible assets, are in excess of the reasonable value thereof, or the offering has been, or would be, made with unreasonable amounts of options;
- (5) The offering has been or would be made with unreasonable amounts of underwriters' or sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options. However, in an application to register the securities for a holding company which is organized for one of its purposes to acquire or start an insurance company, the total commissions, organization and promotion expenses shall not exceed ten percent of the money paid upon stock subscriptions;
- (6) The authority of the applicant or registrant to do business has been denied or revoked by any other governmental agency;
- (7) The enterprise or business of the issuer, promoter, or guarantor is unlawful;
- (8) There is a refusal to furnish information required by the director within a reasonable time to be fixed by the director;
- (9) There has been a violation of the Securities Act of Nebraska, any rule and regulation under the act, or an order of the director of which such issuer or registrant has notice;
- (10) There has been a failure to keep and maintain sufficient records to permit an audit satisfactorily disclosing to the director the true situation or condition of such issuer;
- (11) The applicant or registrant has failed to pay the proper registration, filing, or investigation fee;
- (12) Any registration statement registering securities by qualification, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement

which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact; or

(13) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any federal or state act applicable to the offering.

**Source:** Laws 1967, c. 29, § 3, p. 145; Laws 2002, LB 857, § 1; Laws 2017, LB148, § 10.  
Effective date August 24, 2017.

**8-1109.02 Registration of securities; order of denial, suspension, or revocation; notice; request for hearing; modification of order.**

Upon the entry of an order denying effectiveness to or suspending or revoking the effectiveness of a registration statement to register securities under any part of section 8-1109 or 8-1109.01, the director shall promptly notify the issuer of the securities and the applicant or registrant that the order has been entered and of the reasons therefor and that any person to whom the order is directed may request a hearing within fifteen business days after the issuance of the order. Upon receipt of a written request the matter will be set down for hearing to commence within thirty business days after the receipt unless the parties consent to a later date or the director or a hearing officer sets a later date for good cause. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to the issuer and to the applicant or registrant, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. The director may modify or vacate a stop order if he or she finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

**Source:** Laws 1967, c. 29, § 4, p. 146; Laws 1990, LB 956, § 9; Laws 2001, LB 53, § 22; Laws 2017, LB148, § 11.  
Effective date August 24, 2017.

**8-1110 Securities exempt from registration.**

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

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

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

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

(4) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (a) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality or (b) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(5)(a) Any federal covered security specified in section 18(b)(1) of the Securities Act of 1933 or by rule adopted under that provision;

(b) Any security listed or approved for listing on another securities market specified by rule and regulation or order under the Securities Act of Nebraska;

(c) Any put or a call option contract, a warrant, or a subscription right on or with respect to securities described in subdivisions (a) or (b) of this subdivision;

(d) Any option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934;

(e) Any offer or sale of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or

(f) Any option or a derivative security designated by the Securities and Exchange Commission under section 9(b) of the Securities Exchange Act of 1934;

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

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

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

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

(d) The issuer has had consolidated net income, without taking into account extraordinary items and the cumulative effect of accounting changes, of at least one million dollars in four of its last five fiscal years, including its last fiscal year, and if the offering is of interest-bearing securities the issuer has had for its last fiscal year net income before deduction for income taxes and depreciation of at least one and one-half times the issuer's annual interest expense, taking into account the proposed offering and the intended use of the proceeds. However, if the issuer of the securities is a finance company which has liquid assets of at least one hundred five percent of its liabilities, other than deferred income taxes, deferred investment tax credit, capital stock, and surplus, at the end of its last five fiscal years, the net income requirement before deduction for interest expense shall be one and one-fourth times its annual interest expense. For purposes of this subdivision: (i) Last fiscal year means the most recent year

for which audited financial statements are available, if such statements cover a fiscal period ending not more than fifteen months from the commencement of the offering; (ii) finance company means a company engaged primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial, or consumer financing, banking, or factoring; and (iii) liquid assets means (A) cash, (B) receivables payable on demand or not more than twelve months following the close of the company's last fiscal year less applicable reserves and unearned income, and (C) readily marketable securities less applicable reserves and unearned income;

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

(f) If the offering is of stock or shares other than preferred stock or shares, such securities are owned beneficially or of record on any date within six months prior to the commencement of the offering by at least one thousand two hundred persons, and on such date there are at least seven hundred fifty thousand such shares outstanding with an aggregate market value of at least three million seven hundred fifty thousand dollars based on the average bid price for such day. When determining the number of persons who are beneficial owners of the stock or shares of an issuer, for purposes of this subdivision, the issuer or broker-dealer may rely in good faith upon written information furnished by the record owners;

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

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

**Source:** Laws 1965, c. 549, § 10, p. 1785; Laws 1973, LB 167, § 5; Laws 1980, LB 912, § 1; Laws 1989, LB 391, § 1; Laws 1992, LB 758, § 1; Laws 1993, LB 216, § 6; Laws 1994, LB 942, § 1; Laws 1996, LB 1053, § 8; Laws 1997, LB 335, § 6; Laws 2001, LB 53, § 23; Laws 2003, LB 131, § 9; Laws 2009, LB113, § 1; Laws 2011, LB76, § 2; Laws 2017, LB148, § 12.  
Effective date August 24, 2017.

#### **8-1111 Transactions exempt from registration.**

Except as provided in this section, sections 8-1103 to 8-1109 shall not apply to any of the following transactions:

(1) Any isolated transaction, whether effected through a broker-dealer or not;

(2)(a) Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days if, at the time of the transaction:

(i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check,

blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

(ii) The security is sold at a price reasonably related to the current market price of the security;

(iii) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

(iv) A nationally recognized securities manual designated by rule and regulation or order of the director or a document filed with the Securities and Exchange Commission which is publicly available through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) contains:

(A) A description of the business and operations of the issuer;

(B) The names of the issuer's officers and the names of the issuer's directors, if any, or, in the case of a non-United-States issuer, the corporate equivalents of such persons in the issuer's country of domicile;

(C) An audited balance sheet of the issuer as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

(D) An audited income statement for each of the issuer's immediately preceding two fiscal years, or for the period of existence of the issuer if in existence for less than two years, or, in the case of a reorganization or merger when the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and

(v) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 unless:

(A) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

(B) The issuer of the security has been engaged in continuous business, including predecessors, for at least three years; or

(C) The issuer of the security has total assets of at least two million dollars based on an audited balance sheet as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; or

(b) Any nonissuer transaction in a security by a registered agent of a registered broker-dealer if:

(i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons; and

(ii) The security is senior in rank to the common stock of the issuer both as to payment of dividends or interest and upon dissolution or liquidation of the issuer and such security has been outstanding at least three years and the issuer or any predecessor has not defaulted within the current fiscal year or the three immediately preceding fiscal years in the payment of any dividend, interest, principal, or sinking fund installment on the security when due and payable.

The director may by order deny or revoke the exemption specified in subdivision (a) or (b) of subdivision (2) of this section with respect to a specific security. Upon the entry of such an order, the director shall promptly notify all registered broker-dealers that such order has been entered and the reasons for such order and that within fifteen business days after receipt of a written request the matter will be set for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until modified or vacated by the director. If a hearing is requested or ordered, the director shall, after notice of and opportunity for hearing to all interested persons, enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. No such order shall operate retroactively. No person may be considered to have violated the Securities Act of Nebraska by reason of any offer or sale effected after the entry of any such order if he or she sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the order;

(3) Any nonissuer transaction effected by or through a registered agent of a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the director may by rule and regulation or order require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, are offered and sold as a unit. Such exemption shall not apply to any transaction in a bond or other evidence of indebtedness secured by a real estate mortgage or deed of trust or by an agreement for the sale of real estate if the real estate securing the evidences of indebtedness are parcels of real estate the sale of which requires the subdivision in which the parcels are located to be registered under the federal Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 et seq., as such act existed on January 1, 2017;

(6) Any transaction by an executor, personal representative, administrator, sheriff, marshal, receiver, guardian, or conservator;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading the Securities Act of Nebraska;

(8)(a) Any offer or sale to any of the following, whether the purchaser is acting for itself or in some fiduciary capacity:

(i) A bank, savings institution, credit union, trust company, or other financial institution;

(ii) An insurance company;

(iii) An investment company as defined in the Investment Company Act of 1940;

(iv) A pension or profit-sharing trust;

(v) A broker-dealer;

(vi) A corporation with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities offered;

(vii) A Massachusetts or similar business trust with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities offered;

(viii) A partnership with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities offered;

(ix) A trust with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities, whose purchase is directed by a person who has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment;

(x) Any entity in which all of the equity owners are individuals who are individual accredited investors as defined in subdivision (b) of this subdivision;

(xi) An institutional buyer as may be defined by the director by rule and regulation or order; or

(xii) An individual accredited investor.

(b) For purposes of subdivision (8)(a) of this section, individual accredited investor means (i) any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer, (ii) any manager of a limited liability company that is the issuer of the securities being offered or sold, (iii) any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase, exceeds one million dollars, excluding the value of the primary residence of such person, or (iv) any natural person who had an individual income in excess of two hundred thousand dollars in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(9)(a) Any transaction pursuant to an offering in which sales are made to not more than fifteen persons, other than those designated in subdivisions (8), (11), and (17) of this section, in this state during any period of twelve consecutive months if (i) the seller reasonably believes that all the buyers are purchasing for investment, (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer, (iii) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (iv) no general or public advertisements or solicitations are made.

(b) If a seller (i) makes sales pursuant to this subdivision for five consecutive twelve-month periods or (ii) makes sales of at least one million dollars from an offering or offerings pursuant to this subdivision, the seller shall, within ninety days after the earlier of either such occurrence, file with the director audited financial statements and a sales report which lists the names and addresses of all purchasers and holders of the seller's securities and the amount of securities held by such persons. Subsequent thereto, such seller shall file audited financial



statements and sales reports with the director each time an additional one million dollars in securities is sold pursuant to this subdivision or after the elapse of each additional sixty-month period during which sales are made pursuant to this subdivision;

(10) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber;

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state or (b) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days;

(12) Any offer, but not a sale, of a security for which registration statements have been filed under both the Securities Act of Nebraska and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either the Securities Act of Nebraska or the Securities Act of 1933;

(13) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by the stockholders for the distribution other than the surrender of a right to a cash dividend when the stockholder can elect to take a dividend in cash or stock;

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) Any transaction involving the issuance for cash of any evidence of ownership interest or indebtedness by a cooperative formed as a corporation under section 21-1301 or 21-1401 or a limited cooperative association formed under the Nebraska Limited Cooperative Association Act if the issuer has first filed a notice of intention to issue with the director and the director has not by order, mailed to the issuer by certified or registered mail within ten business days after receipt thereof, disallowed the exemption;

(16) Any transaction in this state not involving a public offering when (a) there is no general or public advertising or solicitation, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) any such transaction is effected in accordance with rules and regulations of the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of

investors. For purposes of this subdivision, not involving a public offering means any offering in which the seller has reason to believe that the securities purchased are taken for investment and in which each offeree, by reason of his or her knowledge about the affairs of the issuer or otherwise, does not require the protections afforded by registration under sections 8-1104 to 8-1107 in order to make a reasonably informed judgment with respect to such investment;

(17) Any security issued in connection with an employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees, if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer. This subdivision shall apply to offers and sales to the following individuals:

(a) Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;

(b) Family members who acquire such securities from those persons through gifts or domestic relations orders;

(c) Former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and

(d) Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent of their annual income from those organizations;

(18) Any interest in a common trust fund or similar fund maintained by a bank or trust company organized and supervised under the laws of any state or a bank organized under the laws of the United States for the collective investment and reinvestment of funds contributed to such common trust fund or similar fund by the bank or trust company in its capacity as trustee, personal representative, administrator, or guardian and any interest in a collective investment fund or similar fund maintained by the bank or trust company for the collective investment of funds contributed to such collective investment fund or similar fund by the bank or trust company in its capacity as trustee or agent which interest is issued in connection with an employee's savings, pension, profit-sharing, or similar benefit plan or a self-employed person's retirement plan, if a notice generally describing the terms of the collective investment fund or similar fund is filed by the bank or trust company with the director within thirty days after the establishment of the fund. Failure to give the notice may be cured by an order issued by the director in his or her discretion;

(19) Any transaction in which a United States Series EE Savings Bond is given or delivered with or as a bonus on account of any purchase of any item or thing;

(20) Any transaction in this state not involving a public offering by a Nebraska issuer selling solely to Nebraska residents, when (a) any such transaction is effected in accordance with rules and regulations of the director relating to this section when the director finds in adopting and promulgating such rules

and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director no later than twenty days prior to any sales for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) there is no general or public advertising or solicitation;

(21) Any transaction by a person who is an organization described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 involving an offering of interests in a fund described in section 3(c)(10)(B) of the Investment Company Act of 1940 solely to persons who are organizations described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 when (a) there is no general or public advertising or solicitation, (b) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (c) any such transaction is effected by a trustee, director, officer, employee, or volunteer of the seller who is either a volunteer or is engaged in the overall fundraising activities of a charitable organization and receives no commission or other special compensation based on the number or the value of interests sold in the fund;

(22) Any offer or sale of any viatical settlement contract or any fractionalized or pooled interest therein in a transaction that meets all of the following criteria:

(a) Sales of such securities are made only to the following purchasers:

(i) A natural person who, either individually or jointly with the person's spouse, (A) has a minimum net worth of two hundred fifty thousand dollars and had taxable income in excess of one hundred twenty-five thousand dollars in each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year or (B) has a minimum net worth of five hundred thousand dollars. Net worth shall be determined exclusive of home, home furnishings, and automobiles;

(ii) A corporation, partnership, or other organization specifically formed for the purpose of acquiring securities offered by the issuer in reliance upon this exemption if each equity owner of the corporation, partnership, or other organization is a person described in subdivision (22)(a)(i) of this section;

(iii) A pension or profit-sharing trust of the issuer, a self-employed individual retirement plan, or an individual retirement account, if the investment decisions made on behalf of the trust, plan, or account are made solely by persons described in subdivision (22)(a)(i) of this section; or

(iv) An organization described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01, or a corporation, Massachusetts or similar business trust, or partnership with total assets in excess of five million dollars according to its most recent audited financial statements;

(b) The amount of the investment of any purchaser, except a purchaser described in subdivision (a)(ii) of this subdivision, does not exceed five percent of the net worth, as determined by this subdivision, of that purchaser;

(c) Each purchaser represents that the purchaser is purchasing for the purchaser's own account or trust account, if the purchaser is a trustee, and not with a view to or for sale in connection with a distribution of the security;

(d)(i) Each purchaser receives, on or before the date the purchaser remits consideration pursuant to the purchase agreement, the following information in writing:

(A) The name, principal business and mailing addresses, and telephone number of the issuer;

(B) The suitability standards for prospective purchasers as set forth in subdivision (a) of this subdivision;

(C) A description of the issuer's type of business organization and the state in which the issuer is organized or incorporated;

(D) A brief description of the business of the issuer;

(E) If the issuer retains ownership or becomes the beneficiary of the insurance policy, an audit report from an independent certified public accountant together with a balance sheet and related statements of income, retained earnings, and cash flows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cash flows as of a date within fifteen months before the date of the initial issuance of the securities described in this subdivision. The financial statements shall be prepared in conformity with generally accepted accounting principles. If the date of the audit report is more than one hundred twenty days before the date of the initial issuance of the securities described in this subdivision, the issuer shall provide unaudited interim financial statements;

(F) The names of all directors, officers, partners, members, or trustees of the issuer;

(G) A description of any order, judgment, or decree that is final as to the issuing entity of any state, federal, or foreign governmental agency or administrator, or of any state, federal, or foreign court of competent jurisdiction (I) revoking, suspending, denying, or censuring for cause any license, permit, or other authority of the issuer or of any director, officer, partner, member, trustee, or person owning or controlling, directly or indirectly, ten percent or more of the outstanding interest or equity securities of the issuer, to engage in the securities, commodities, franchise, insurance, real estate, or lending business or in the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (II) permanently restraining, enjoining, barring, suspending, or censuring any such person from engaging in or continuing any conduct, practice, or employment in connection with the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (III) convicting any such person of, or pleading nolo contendere by any such person to, any felony or misdemeanor involving a security, commodity, franchise, insurance, real estate, or loan, or any aspect of the securities, commodities, franchise, insurance, real estate, or lending business, or involving dishonesty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property, or (IV) holding any such person liable in a civil action involving breach of a fiduciary duty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation

of property. This subdivision does not apply to any order, judgment, or decree that has been vacated or overturned or is more than ten years old;

(H) Notice of the purchaser's right to rescind or cancel the investment and receive a refund;

(I) A statement to the effect that any projected rate of return to the purchaser from the purchase of a viatical settlement contract or any fractionalized or pooled interest therein is based on an estimated life expectancy for the person insured under the life insurance policy; that the return on the purchase may vary substantially from the expected rate of return based upon the actual life expectancy of the insured that may be less than, may be equal to, or may greatly exceed the estimated life expectancy; and that the rate of return would be higher if the actual life expectancy were less than, and lower if the actual life expectancy were greater than, the estimated life expectancy of the insured at the time the viatical settlement contract was closed;

(J) A statement that the purchaser should consult with his or her tax advisor regarding the tax consequences of the purchase of the viatical settlement contract or any fractionalized or pooled interest therein; and

(K) Any other information as may be prescribed by rule and regulation or order of the director; and

(ii) The purchaser receives in writing at least five business days prior to closing the transaction:

(A) The name, address, and telephone number of the issuing insurance company and the name, address, and telephone number of the state or foreign country regulator of the insurance company;

(B) The total face value of the insurance policy and the percentage of the insurance policy the purchaser will own;

(C) The insurance policy number, issue date, and type;

(D) If a group insurance policy, the name, address, and telephone number of the group and, if applicable, the material terms and conditions of converting the policy to an individual policy, including the amount of increased premiums;

(E) If a term insurance policy, the term and the name, address, and telephone number of the person who will be responsible for renewing the policy if necessary;

(F) That the insurance policy is beyond the state statute for contestability and the reason therefor;

(G) The insurance policy premiums and terms of premium payments;

(H) The amount of the purchaser's money that will be set aside to pay premiums;

(I) The name, address, and telephone number of the person who will be the insurance policyowner and the person who will be responsible for paying premiums;

(J) The date on which the purchaser will be required to pay premiums and the amount of the premium, if known; and

(K) Any other information as may be prescribed by rule and regulation or order of the director;

(e) The purchaser may rescind or cancel the purchase for any reason by giving written notice of rescission or cancellation to the issuer or the issuer's

agent within (i) fifteen calendar days after the date the purchaser remits the required consideration or receives the disclosure required under subdivision (d)(i) of this subdivision and (ii) five business days after the date the purchaser receives the disclosure required by subdivision (d)(ii) of this subdivision. No specific form is required for the rescission or cancellation. The notice is effective when personally delivered, deposited in the United States mail, or deposited with a commercial courier or delivery service. The issuer shall refund all the purchaser's money within seven calendar days after receiving the notice of rescission or cancellation;

(f) A notice of the issuer's intent to sell securities pursuant to this subdivision, signed by a duly authorized officer of the issuer and notarized, together with a filing fee of two hundred dollars, is filed with the department before any offers or sales of securities are made under this subdivision. Such notice shall include:

(i) The issuer's name, the issuer's type of organization, the state in which the issuer is organized, the date the issuer intends to begin selling securities within or from this state, and the issuer's principal business;

(ii) A consent to service of process; and

(iii) An audit report of an independent certified public accountant together with a balance sheet and related statements of income, retained earnings and cash flows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cash flows as of a date within fifteen months before the date of the notice prescribed in this subdivision. The financial statements shall be prepared in conformity with generally accepted accounting principles and shall be examined according to generally accepted auditing standards. If the date of the audit report is more than one hundred twenty days before the date of the notice prescribed in this subdivision, the issuer shall provide unaudited interim financial statements;

(g) No commission or remuneration is paid directly or indirectly for soliciting any prospective purchaser, except to a registered agent of a registered broker-dealer or registered issuer-dealer; and

(h) At least ten days before use within this state, the issuer files with the department all advertising and sales materials that will be published, exhibited, broadcast, or otherwise used, directly or indirectly, in the offer or sale of a viatical settlement contract in this state;

(23) Any transaction in this state not involving a public offering by a Nebraska issuer selling solely to Nebraska residents when:

(a) The proceeds from all sales of securities by the issuer in any two-year period do not exceed seven hundred fifty thousand dollars or such greater amount as from time to time may be set in accordance with rules and regulations adopted and promulgated by the director to adjust the amount to reflect changes in the Consumer Price Index for All Urban Consumers as prepared by the United States Department of Labor, Bureau of Labor Statistics, and at least eighty percent of the proceeds are used in Nebraska;

(b) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer;

(c) The issuer, any partner or limited liability company member of the issuer, any officer, director, or any person occupying a similar status of the issuer, any person performing similar functions for the issuer, or any person holding a

direct or indirect ownership interest in the issuer or in any way a beneficial interest in such sale of securities of the issuer, has not been:

(i) Found by a final order of any state or federal administrative agency or a court of competent jurisdiction to have violated any provision of the Securities Act of Nebraska or a similar act of any other state or of the United States;

(ii) Convicted of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(iii) Found by any state or federal administrative agency or court of competent jurisdiction to have engaged in fraud or deceit, including, but not limited to, making an untrue statement of a material fact or omitting to state a material fact; or

(iv) Temporarily or preliminarily restrained or enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state or with the Securities and Exchange Commission;

(d)(i) At least fifteen business days prior to the offer or sale, the issuer files a notice with the director, which notice shall include:

(A) The name, address, telephone number, and email address of the issuer;

(B) The name and address of each person holding direct or indirect ownership or beneficial interest in the issuer;

(C) The amount of the offering; and

(D) The type of security being offered, the manner in which purchasers will be solicited, and a statement made upon oath or affirmation that the conditions of this exemption have been or will be met.

(ii) Failure to give such notice may be cured by an order issued by the director in his or her discretion;

(e) Prior to payment of consideration for the securities, the offeree receives a written disclosure statement containing (i) a description of the proposed use of the proceeds of the offering; (ii) the name of each partner or limited liability company member of the issuer, officer, director, or person occupying a similar status of the issuer or performing similar functions for the issuer; and (iii) the financial condition of the issuer;

(f) The purchaser signs a subscription agreement in which the purchaser acknowledges that he or she:

(i) Has received the written disclosure statement;

(ii) Understands the investment involves a high level of risk; and

(iii) Has the financial resources to withstand the total loss of the money invested; and

(g) The issuer, within thirty days after the completion of the offering, files with the department a statement indicating the number of investors, the total dollar amount raised, and the use of the offering proceeds; or

(24)(a) An offer or a sale of a security made after August 30, 2015, by an issuer if the offer or sale is conducted in accordance with all the following requirements:

(i) The issuer of the security is a business entity organized under the laws of Nebraska and authorized to do business in Nebraska;

(ii) The transaction meets the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933 and Rule 147 adopted under the Securities Act of 1933, or complies with Rule 147A adopted under the Securities Act of 1933;

(iii) Except as provided in subdivision (c) of this subdivision, the sum of all cash and other consideration to be received for all sales of the security in reliance on the exemption under this subdivision, excluding sales to any accredited investor, does not exceed the following amount:

(A) If the issuer has not undergone, and made available to each prospective investor and the director the documentation resulting from, a financial audit of its most recently completed fiscal year that complies with generally accepted accounting principles, one million dollars, less the aggregate amount received for all sales of securities by the issuer within the twelve months before the first offer or sale made in reliance on the exemption under this subdivision; or

(B) If the issuer has undergone, and made available to each prospective investor and the director the documentation resulting from, a financial audit of its most recently completed fiscal year that complies with generally accepted accounting principles, two million dollars, less the aggregate amount received for all sales of securities by the issuer within the twelve months before the first offer or sale made in reliance on the exemption under this subdivision;

(iv) The issuer does not accept more than five thousand dollars from any single purchaser except that such limitation shall not apply to an accredited investor;

(v) Unless waived by written consent by the director, not less than ten days before the commencement of an offering of securities in reliance on the exemption under this subdivision, the issuer must do all the following:

(A) Make a notice filing with the department on a form prescribed by the director;

(B) Pay a filing fee of two hundred dollars. However, no filing fee is required to file amendments to the form;

(C) Provide the director a copy of the disclosure document to be provided to prospective investors under subdivision (a)(xi) of this subdivision;

(D) Provide the director a copy of an escrow agreement with a bank, regulated trust company, savings bank, savings and loan association, or credit union authorized to do business in Nebraska in which the issuer will deposit the investor funds or cause the investor funds to be deposited. The bank, regulated trust company, savings bank, savings and loan association, or credit union in which the investor funds are deposited is only responsible to act at the direction of the party establishing the escrow agreement and does not have any duty or liability, contractual or otherwise, to any investor or other person;

(E) The issuer shall not access the escrow funds until the aggregate funds raised from all investors equals or exceeds the minimum amount specified in the escrow agreement; and

(F) An investor may cancel the investor's commitment to invest if the target offering amount is not raised before the time stated in the escrow agreement;



(vi) The issuer is not, either before or as a result of the offering, an investment company, as defined in section 3 of the Investment Company Act of 1940, an entity that would be an investment company but for the exclusions provided in section 3(c) of the Investment Company Act of 1940, or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934;

(vii) The issuer informs all prospective purchasers of securities offered under an exemption under this subdivision that the securities have not been registered under federal or state securities law and that the securities are subject to limitations on resale. The issuer shall display the following legend conspicuously on the cover page of the disclosure document:

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION, DEPARTMENT, OR DIVISION OR OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SEC RULE 147 OR SUBSECTION (e) OF RULE 147A ADOPTED UNDER THE SECURITIES ACT OF 1933 AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.;

(viii) The issuer requires each purchaser to certify in writing or electronically as follows:

I understand and acknowledge that I am investing in a high-risk, speculative business venture. I may lose all of my investment, or under some circumstances more than my investment, and I can afford this loss. This offering has not been reviewed or approved by any state or federal securities commission, department, or division or other regulatory authority and no such person or authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering. The securities I am acquiring in this offering are illiquid, there is no ready market for the sale of such securities, it may be difficult or impossible for me to sell or otherwise dispose of this investment, and, accordingly, I may be required to hold this investment indefinitely. I may be subject to tax on my share of the taxable income and losses of the company, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the company.;

(ix) The issuer obtains from each purchaser of a security offered under an exemption under this subdivision evidence that the purchaser is a resident of Nebraska and, if applicable, is an individual accredited investor;

(x) All payments for purchase of securities offered under an exemption under this subdivision are directed to and held by the financial institution specified in subdivision (a)(v)(D) of this subdivision. The director may request from the financial institutions information necessary to ensure compliance with this

section. This information is not a public record and is not available for public inspection;

(xi) The issuer of securities offered under an exemption under this subdivision provides a disclosure document to each prospective investor at the time the offer of securities is made to the prospective investor that contains all the following:

(A) A description of the company, its type of entity, the address and telephone number of its principal office, its history, its business plan, and the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer;

(B) The identity of all persons owning more than twenty percent of the ownership interests of any class of securities of the company;

(C) The identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing similar functions in the name of and on behalf of the issuer, including their titles and their prior experience;

(D) The terms and conditions of the securities being offered and of any outstanding securities of the company; the minimum and maximum amount of securities being offered, if any; either the percentage ownership of the company represented by the offered securities or the valuation of the company implied by the price of the offered securities; the price per share, unit, or interest of the securities being offered; any restrictions on transfer of the securities being offered; and a disclosure of any anticipated future issuance of securities that might dilute the value of securities being offered;

(E) The identity of any person who has been or will be retained by the issuer to assist the issuer in conducting the offering and sale of the securities, including any portal operator but excluding persons acting solely as accountants or attorneys and employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital;

(F) For each person identified as required in subdivision (a)(xi)(E) of this subdivision, a description of the consideration being paid to the person for such assistance;

(G) A description of any litigation, legal proceedings, or pending regulatory action involving the company or its management;

(H) The names and addresses of each portal operator that will be offering or selling the issuer's securities under an exemption under this subdivision;

(I) The Uniform Resource Locator for each funding portal that will be used by the portal operator to offer or sell the issuer's securities under an exemption under this subdivision; and

(J) Any additional information material to the offering, including, if appropriate, a discussion of significant factors that make the offering speculative or risky. This discussion must be concise and organized logically and may not be limited to risks that could apply to any issuer or any offering;

(xii) The offering or sale exempted under this subdivision is made exclusively through one or more funding portals and each funding portal is subject to the following:

(A) Before any offer or sale of securities, the issuer must provide to the portal operator evidence that the issuer is organized under the laws of Nebraska and is authorized to do business in Nebraska;

(B) Subject to subdivisions (a)(xii)(C) and (E) of this subdivision, the portal operator must register with the department by filing a statement, accompanied by a two-hundred-dollar filing fee, that includes the following information:

(I) Documentation which demonstrates that the portal operator is a business entity and authorized to do business in Nebraska;

(II) A representation that the funding portal is being used to offer and sell securities pursuant to the exemption under this subdivision; and

(III) The identity and location of, and contact information for, the portal operator;

(C) The portal operator is not required to register as a broker-dealer if all of the following apply with respect to the funding portal and its portal operator:

(I) It does not offer investment advice or recommendations;

(II) It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the funding portal;

(III) It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the funding portal;

(IV) It is not compensated based on the amount of securities sold, and it does not hold, manage, possess, or otherwise handle investor funds or securities;

(V) The fee it charges an issuer for an offering of securities on the funding portal is a fixed amount for each offering, a variable amount based on the length of time that the securities are offered on the funding portal, or a combination of the fixed and variable amounts;

(VI) It does not identify, promote, or otherwise refer to any individual security offered on the funding portal in any advertising for the funding portal;

(VII) It does not engage in any other activities that the director, by rule and regulation or order, determines are prohibited of the funding portal; and

(VIII) Neither the portal operator, nor any director, executive officer, general partner, managing member, or other person with management authority over the portal operator, has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933, that would disqualify an issuer under Rule 506(d) adopted under the Securities Act of 1933, from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933. However, this subdivision does not apply if both of the following are met:

(1) On a showing of good cause and without prejudice to any other action by the Director of Banking and Finance, the director determines that it is not necessary under the circumstances that an exemption is denied; and

(2) The portal operator establishes that it made a factual inquiry into whether any disqualification existed under this subdivision but did not know, and in the exercise of reasonable care, could not have known, that a disqualification existed under this subdivision. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants;

(D) If any change occurs that affects the funding portal's registration exemption, the portal operator must notify the department within thirty days after the change occurs;

(E) A registered broker-dealer who also serves as a portal operator must register with the department as a portal operator pursuant to subdivision (a)(xii)(B) of this subdivision, except that the fee for registration shall be waived;

(F) The issuer and the portal operator must maintain records of all offers and sales of securities effected through the funding portal and must provide ready access to the records to the department, upon request. The records of a portal operator under this subdivision are subject to the reasonable periodic, special, or other audits or inspections by a representative of the director, in or outside Nebraska, as the director considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The director may copy, and remove for audit or inspection copies of, all records the director reasonably considers necessary or appropriate to conduct the audit or inspection. The director may assess a reasonable charge for conducting an audit or inspection under this subdivision;

(G) The portal operator shall limit web site access to the offer or sale of securities to only Nebraska residents;

(H) The portal operator shall not hold, manage, possess, or handle investor funds or securities; and

(I) The portal operator may not be an investor in any Nebraska offering under this subdivision.

(b) An issuer of a security, the offer and sale of which is exempt under this subdivision, shall provide, free of charge, a quarterly report to the issuer's investors until no securities issued under an exemption under this subdivision are outstanding. An issuer may satisfy the reporting requirement of this subdivision by making the information available on a funding portal if the information is made available within forty-five days after the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. An issuer shall file each quarterly report under this subdivision with the department and, if the quarterly report is made available on a funding portal, the issuer shall also provide a written copy of the report to any investor upon request. The report must contain all the following:

(i) Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received; and

(ii) An analysis by management of the issuer of the business operations and financial condition of the issuer.

(c) An offer or a sale under this subdivision to an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning ten percent or more of the outstanding shares of any class or classes of securities of the issuer does not count toward the monetary limitations in subdivision (a)(iii) of this subdivision.

(d) The exemption under this subdivision may not be used in conjunction with any other exemption under the Securities Act of Nebraska, except for

offers and sales to individuals identified in the disclosure document, during the immediately preceding twelve-month period.

(e) The exemption under this subdivision does not apply if an issuer or any director, executive officer, general partner, managing member, or other person with management authority over the issuer, has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933, that would disqualify an issuer under Rule 506(d) adopted under the Securities Act of 1933, from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933. However, this subdivision does not apply if both of the following are met:

(i) On a showing of good cause and without prejudice to any other action by the Director of Banking and Finance, the director determines that it is not necessary under the circumstances that an exemption is denied; and

(ii) The issuer establishes that it made a factual inquiry into whether any disqualification existed under this subdivision but did not know, and in the exercise of reasonable care, could not have known, that a disqualification existed under this subdivision. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.

(f) For purposes of this subdivision:

(i) Accredited investor means a bank, a savings institution, a trust company, an insurance company, an investment company as defined in the Investment Company Act of 1940, a pension or profit-sharing trust or other financial institution or institutional buyer, an individual accredited investor, or a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(ii) Funding portal means an Internet web site that is operated by a portal operator for the offer and sale of securities pursuant to this subdivision;

(iii) Individual accredited investor means (A) any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer, (B) any manager of a limited liability company that is the issuer of the securities being offered or sold, (C) any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase, exceeds one million dollars, excluding the value of the primary residence of such person, or (D) any natural person who had an individual income in excess of two hundred thousand dollars in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year; and

(iv) Portal operator means an entity authorized to do business in this state which operates a funding portal and has registered with the department as required by this subdivision.

**Source:** Laws 1965, c. 549, § 11, p. 1787; Laws 1973, LB 167, § 6; Laws 1977, LB 263, § 5; Laws 1978, LB 760, § 2; Laws 1980, LB 496, § 1; Laws 1986, LB 909, § 11; Laws 1987, LB 93, § 1; Laws 1989, LB 60, § 3; Laws 1990, LB 956, § 10; Laws 1991, LB 305, § 5; Laws 1992, LB 758, § 2; Laws 1993, LB 216, § 7; Laws 1994, LB 1241, § 1; Laws 1995, LB 96, § 1; Laws 1996, LB 1053, § 9; Laws 1997, LB 335, § 7; Laws 2000, LB 932, § 20; Laws

2001, LB 52, § 44; Laws 2002, LB 957, § 9; Laws 2006, LB 876, § 20; Laws 2010, LB814, § 1; Laws 2011, LB76, § 3; Laws 2013, LB205, § 2; Laws 2013, LB214, § 6; Laws 2015, LB226, § 1; Laws 2017, LB148, § 13.  
Effective date August 24, 2017.

Cross References

Nebraska Limited Cooperative Association Act, see section 21-2901.

**8-1115 Investigations; subpoena; director; powers.**

(1) The director in his or her discretion (a) may make such public or private investigations within or without this state as he or she deems necessary to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate the Securities Act of Nebraska or any rule and regulation or order under the act or to aid in the enforcement of the act or in the adopting and promulgating of rules and regulations and the prescribing of forms under the act, (b) may require or permit any person to file a statement in writing, under oath or otherwise as the director may determine, as to all the facts and circumstances concerning the matter to be investigated, and (c) may publish information concerning any violation of the act or any rule and regulation or order under the act. In the discretion of the director, the actual expense of any such investigation may be charged to the applicant or person who is the subject of the investigation.

(2) For the purpose of any investigation or proceeding under the act, the director or any person designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(3) At the request of an administrator responsible for enforcement of the securities laws of another state, the director may issue subpoenas to compel the attendance of any person or require the production of records in this state if the alleged violation being investigated would be a violation of the Securities Act of Nebraska if the activities had occurred in this state.

(4) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the director, may issue to such person an order requiring him or her to appear before the director, or the officer designated by the director, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

**Source:** Laws 1965, c. 549, § 15, p. 1791; Laws 1987, LB 497, § 1; Laws 2017, LB148, § 14.  
Effective date August 24, 2017.

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

Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of the Securities Act of Nebraska or any rule and regulation or order under the act,

the director may in his or her discretion bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with the Securities Act of Nebraska or any rule and regulation or order under the act. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant's assets. Upon a proper showing by the director, the court may invoke its equitable powers under the law and issue an order of rescission, restitution, or disgorgement, an order freezing assets, an order requiring an accounting, or a writ of attachment or writ of general or specific execution, directed to any person who has engaged in or is engaging in any act constituting a violation of any provision of the Securities Act of Nebraska or any rule and regulation or order under the act. The director shall not be required to post a bond.

**Source:** Laws 1965, c. 549, § 16, p. 1792; Laws 1998, LB 894, § 3; Laws 2009, LB113, § 3; Laws 2017, LB148, § 15.  
Effective date August 24, 2017.

#### **8-1117 Violations; penalty.**

(1) Any person who willfully violates any provision of the Securities Act of Nebraska except section 8-1113, or who willfully violates any rule and regulation or order under the act, or who willfully violates the provisions of section 8-1113 knowing the statement made to be false or misleading in any material respect is guilty of a Class IV felony. No indictment may be returned or information filed under the act more than five years after the alleged violation.

(2) The director may refer such evidence as may be available concerning violations of the act or any rule and regulation or order under the act to the Attorney General or the proper county attorney, who may in his or her discretion, with or without such a reference, institute the appropriate criminal proceedings under the act.

(3) Nothing in the act shall limit the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

**Source:** Laws 1965, c. 549, § 17, p. 1792; Laws 1977, LB 40, § 65; Laws 1998, LB 894, § 4; Laws 2017, LB148, § 16.  
Effective date August 24, 2017.

#### **8-1118 Violations; damages; statute of limitations.**

(1) Any person who offers or sells a security in violation of section 8-1104 or offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in the light of the circumstances under which they are made not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he or she did not know and in the exercise of reasonable care could not have known of the untruth or omission, shall be liable to the person buying the security from him or her, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six percent per annum from the date of payment, costs, and reasonable attorney's fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he or she no longer owns the security, except that in actions brought based on a transaction exempt from registration under subdivision (23) of section 8-1111, no person shall be

liable for any statement of a material fact made or for an omission of a material fact required to be stated or necessary to make the statement made not misleading unless such statement or omission was made with the intent to defraud or mislead, with the burden of proof in such cases being on the claimant. Damages shall be the amount that would be recoverable upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at six percent per annum from the date of disposition.

(2) Any investment adviser who provides investment adviser services to another person which results in a willful violation of subsection (2), (3), or (4) of section 8-1102, subsection (2) of section 8-1103, or section 8-1114 or any investment adviser who employs any device, scheme, or artifice to defraud such person or engages in any act, practice, or course of business which operates or would operate as a fraud or deceit on such person shall be liable to such person. Such person may sue either at law or in equity to recover the consideration paid for the investment adviser services and any loss due to such investment adviser services, together with interest at six percent per annum from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such investment adviser services and any other economic benefit.

(3) Every person who directly or indirectly controls a person liable under subsections (1) and (2) of this section, including every partner, limited liability company member, officer, director, or person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or employee of such person who materially aids in the conduct giving rise to liability, and every broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative who materially aids in such conduct shall be liable jointly and severally with and to the same extent as such person, unless able to sustain the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution as in cases of contract among the several persons so liable.

(4) Any tender specified in this section may be made at any time before entry of judgment. Every cause of action under the Securities Act of Nebraska shall survive the death of any person who might have been a plaintiff or defendant. No person may sue under this section more than three years after the contract of sale or the rendering of investment advice. No person may sue under this section (a) if the buyer received a written offer, before an action is commenced and at a time when he or she owned the security, to refund the consideration paid together with interest at six percent per annum from the date of payment, less the amount of any income received on the security, and the buyer failed to accept the offer within thirty days of its receipt, or (b) if the buyer received such an offer before an action is commenced and at a time when he or she did not own the security, unless the buyer rejected the offer in writing within thirty days of its receipt.

(5) No person who has made or engaged in the performance of any contract in violation of any provision of the act or any rule and regulation or order under the act, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any action on the contract. Any condition, stipulation, or provision binding any person acquiring any security



or receiving any investment advice to waive compliance with any provision of the act or any rule and regulation or order under the act shall be void.

**Source:** Laws 1965, c. 549, § 18, p. 1793; Laws 1973, LB 167, § 8; Laws 1993, LB 216, § 9; Laws 1993, LB 121, § 99; Laws 1994, LB 884, § 14; Laws 2013, LB205, § 3; Laws 2017, LB148, § 17.  
Effective date August 24, 2017.

**8-1120 Administration of act; Director of Banking and Finance; powers and duties; use of information for personal benefit prohibited; Securities Act Cash Fund; created; use; investment; transfers; document filed, when.**

(1) Except as otherwise provided in this section, the Securities Act of Nebraska shall be administered by the Director of Banking and Finance who may employ such deputies, examiners, assistants, or counsel as may be reasonably necessary for the purpose thereof. The employment of any person for the administration of the act is subject to section 49-1499.07. The director may delegate to a deputy director or counsel any powers, authority, and duties imposed upon or granted to the director under the act, such as may be lawfully delegated under the common law or the statutes of this state. The director may also employ special counsel with respect to any investigation conducted by him or her under the act or with respect to any litigation to which the director is a party under the act.

(2) A security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company shall be registered, pursuant to the provisions of sections 8-1104 to 8-1109, with the Director of Insurance who shall as to such registrations administer and enforce the act, and as pertains to the administration and enforcement of such registration of such securities all references in the act to director shall mean the Director of Insurance.

(3)(a) It shall be unlawful for the director or any of his or her employees to use for personal benefit any information which is filed with or obtained by the director and which is not made public. Neither the director nor any of his or her employees shall disclose any confidential information except among themselves, when necessary or appropriate in a proceeding, examination, or investigation under the act, or as authorized in subdivision (3)(b) of this subsection. No provision of the act shall either create or derogate from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the director or any of his or her employees.

(b)(i) In administering the act, the director may also:

(A) Enter into agreements or relationships with other government officials, including, but not limited to, the securities administrator of a foreign state and the Securities and Exchange Commission, or self-regulatory organizations, to share resources, standardized or uniform methods or procedures, and documents, records, and information; or

(B) Accept and rely on examination or investigation reports made by other government officials, including, but not limited to, the securities administrator of a foreign state and the Securities and Exchange Commission, or self-regulatory organizations.

(ii) For purposes of this subdivision, foreign state means any state of the United States, other than the State of Nebraska, any territory of the United

States, including Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, and the District of Columbia.

(4) The director may adopt and promulgate rules and regulations and prescribe forms to carry out the act. No rule and regulation may be adopted and promulgated or form may be prescribed unless the director finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the act. In adopting and promulgating rules and regulations and prescribing forms the director may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of the Securities Act of Nebraska to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and regulations and forms of the director shall be published and made available to any person upon request.

(5) No provision of the act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule and regulation, form, or order of the director, notwithstanding that the rule and regulation or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(6) Every hearing in an administrative proceeding shall be public unless the director in his or her discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(7) The Securities Act Cash Fund is created. All filing fees, registration fees, and all other fees and all money collected by or paid to the director under any of the provisions of the act shall be remitted to the State Treasurer for credit to the fund, except that registration fees collected by or paid to the Director of Insurance pursuant to the provisions of the act shall be credited to the Department of Insurance Cash Fund. The Securities Act Cash Fund shall be used for the purpose of administering and enforcing the provisions of the act, except that transfers may be made to the General Fund at the direction of the Legislature. Any money in the Securities Act 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.

(8) A document is filed when it is received by the director. The director shall keep a register of all applications for registration and registration statements which are or have ever been effective under the Securities Act of Nebraska and all denial, suspension, or revocation orders which have ever been entered under the act. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such conditions as the director may prescribe.

(9) The director may, by rule and regulation or order, authorize or require the filing of any document required to be filed under the act by electronic or other means, processes, or systems.

(10) Upon request and at such reasonable charges as he or she shall prescribe, the director shall furnish to any person photostatic or other copies, certified under his or her seal of office if requested, of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under the act, any copy so certified shall be prima facie evidence of the contents of the entry or document certified.

(11) The director in his or her discretion may honor requests from interested persons for interpretative opinions.

**Source:** Laws 1965, c. 549, § 20, p. 1795; Laws 1969, c. 584, § 33, p. 2361; Laws 1973, LB 167, § 9; Laws 1983, LB 469, § 1; Laws 1995, LB 7, § 27; Laws 1997, LB 864, § 1; Laws 2000, LB 932, § 21; Laws 2003, LB 217, § 24; Laws 2013, LB199, § 17; Laws 2013, LB214, § 8; Laws 2017, LB148, § 18.  
Effective date August 24, 2017.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**8-1122.01 Federal limits rejected.**

The federal limits on the registration of securities, dealers, brokers, broker-dealers, agents, and investment advisers as provided in the federal Philanthropy Protection Act of 1995, Public Law 104-62, shall not apply in Nebraska and are hereby rejected by the State of Nebraska pursuant to section 6(c) of such act. The State of Nebraska elects to retain the authority to require or not require such registration under the Securities Act of Nebraska and to retain the authority to have such registration requirements apply in all administrative and judicial actions commenced after July 15, 1998.

**Source:** Laws 1998, LB 1180, § 1; Laws 2017, LB148, § 19.  
Effective date August 24, 2017.

**8-1123 Act, how cited.**

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

**Source:** Laws 1965, c. 549, § 23, p. 1797; Laws 1997, LB 335, § 11; Laws 1998, LB 1180, § 2; Laws 2002, LB 957, § 11; Laws 2009, LB113, § 4; Laws 2017, LB148, § 20.  
Effective date August 24, 2017.

**ARTICLE 14**

**DISCLOSURE OF CONFIDENTIAL INFORMATION**

Section

8-1401. Disclosure of confidential records or information; court order; not applicable, when; immunity.

**8-1401 Disclosure of confidential records or information; court order; not applicable, when; immunity.**

(1) No person organized under the Credit Union Act, the Nebraska Banking Act, the Nebraska Industrial Development Corporation Act, the Nebraska Model Business Corporation Act, the Nebraska Nonprofit Corporation Act, the Nebraska Professional Corporation Act, the Nebraska Trust Company Act, or Chapter 8, article 3, or otherwise authorized to conduct business in Nebraska or organized under the laws of the United States, shall be required to disclose any records or information, financial or otherwise, that it deems confidential concerning its affairs or the affairs of any person with which it is doing business to any person, party, agency, or organization, unless:

(a) The disclosure relates to a lawyers trust account and is required to be made to the Counsel for Discipline of the Nebraska Supreme Court pursuant to a rule adopted by the Nebraska Supreme Court;

(b) The disclosure is governed by rules for discovery promulgated pursuant to section 25-1273.01;

(c) The disclosure is made pursuant to section 8-1404;

(d) The request for disclosure is made by a law enforcement agency regarding a crime, a fraud, or any other unlawful activity in which the person to whom the request for disclosure is made is or may be a victim of such crime, fraud, or unlawful activity;

(e) The request for disclosure is made by a governmental agency which is a duly constituted supervisory regulatory agency of the person to whom the request for disclosure is made and the disclosure relates to examinations, audits, investigations, or inquiries of such persons;

(f) The request for disclosure is made pursuant to subpoena issued under the laws of this state by a governmental agency exercising investigatory or adjudicative functions with respect to a matter within the agency's jurisdiction;

(g) The production of records is pursuant to a written demand of the Tax Commissioner under section 77-375;

(h) There is first presented to such person a subpoena, summons, or warrant issued by a court of competent jurisdiction;

(i) A statute by its terms or rules and regulations adopted and promulgated thereunder requires the disclosure, other than by subpoena, summons, warrant, or court order;

(j) There is presented to such person an order of a court of competent jurisdiction setting forth the exact nature and limits of such required disclosure and a showing that all persons to be affected by such order have had reasonable notice and an opportunity to be heard upon the merits of such order;

(k) The request for disclosure relates to information or records regarding the balance due, monthly payments due, payoff amounts, payment history, interest rates, due dates, or similar information for indebtedness owed by a deceased person when the request is made by a person having an ownership interest in real estate or personal property which secures such indebtedness owed to the person to whom the request for disclosure is made; or

(l) There is first presented to such person the written permission of the person about whom records or information is being sought authorizing the release of the requested records or information.

(2) Any person who makes a disclosure of records or information as required by this section shall not be held civilly or criminally liable for such disclosure in the absence of malice, bad faith, intent to deceive, or gross negligence.

(3) This section does not prohibit:

(a) The disclosure of records or information to a certified public accountant while engaged to perform an independent audit;

(b) The disclosure of records or information or the making of reports pursuant to a statute which, by its terms or rules and regulations adopted and promulgated thereunder, permits the disclosure or reports; or

(c) The disclosure, in the regular course of business, of records or information for the purpose of conducting due diligence pursuant to a proposed

purchase or sale of a person subject to the provisions of this section or of the assets or liabilities of such a person.

**Source:** Laws 1977, LB 384, § 1; Laws 1979, LB 216, § 1; Laws 1986, LB 529, § 1; Laws 1995, LB 109, § 193; Laws 1996, LB 681, § 178; Laws 1996, LB 948, § 121; Laws 1998, LB 1104, § 1; Laws 2002, LB 857, § 2; Laws 2002, LB 957, § 12; Laws 2003, LB 131, § 10; Laws 2003, LB 156, § 1; Laws 2012, LB811, § 1; Laws 2014, LB749, § 233; Laws 2014, LB788, § 3; Laws 2017, LB140, § 145.

Operative date August 24, 2017.

#### Cross References

**Credit Union Act**, see section 21-1701.

**Nebraska Banking Act**, see section 8-101.02.

**Nebraska Industrial Development Corporation Act**, see section 21-2318.

**Nebraska Model Business Corporation Act**, see section 21-201.

**Nebraska Nonprofit Corporation Act**, see section 21-1901.

**Nebraska Professional Corporation Act**, see section 21-2201.

**Nebraska Trust Company Act**, see section 8-201.01.

## ARTICLE 24

### CREDIT CARD BANK

#### Section

8-2401. Formation; conditions.

#### **8-2401 Formation; conditions.**

A credit card bank may be formed under the Nebraska Banking Act if all of the following conditions are met:

(1) A credit card bank shall not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties;

(2) A credit card bank may not accept any savings or time deposits of less than one hundred thousand dollars, except that savings or time deposits of any amount may be accepted from affiliated financial institutions;

(3) The services of a credit card bank shall be limited to the solicitation, processing, and making of loans instituted by credit card or transaction card and matters relating or incidental thereto;

(4) A credit card bank shall not make commercial loans;

(5) A credit card bank shall, on the date of commencement of banking business in this state, have a minimum capital stock and paid-in surplus of two million five hundred thousand dollars;

(6) A credit card bank shall (a) employ on the date of commencement of its banking business in this state or within one year after such date not less than fifty persons in this state in its business or (b) contract with a qualifying association as defined in subdivision (4) of section 8-1511 to provide for the processing of its credit card or transaction card operations;

(7) A credit card bank shall maintain only one office that accepts deposits;

(8) A credit card bank may maintain one or more processing centers in this state;

(9) A credit card bank shall operate in a manner and at a location that is not likely to attract customers from the general public in this state to the substantial detriment of existing financial institutions as defined in section 8-101.03 located in this state; and

(10) A credit card bank shall provide for the insurance of deposits as described in subsection (1) of section 8-702.

**Source:** Laws 2004, LB 999, § 17; Laws 2005, LB 533, § 24; Laws 2017, LB140, § 146.

Operative date August 24, 2017.

Cross References

Nebraska Banking Act, see section 8-101.02.

ARTICLE 27

NEBRASKA MONEY TRANSMITTERS ACT

Section

8-2727. License applicant; surety bond; alternate security; duration.

8-2733. Application; director; duties; powers; onsite investigation; costs; denial of application; reasons; hearing.

**8-2727 License applicant; surety bond; alternate security; duration.**

(1)(a) Except as provided in subsection (2) of this section, an applicant shall submit, with the application, a surety bond issued by a bonding company or insurance company authorized to do business in this state and acceptable to the director in the principal sum of one hundred thousand dollars. The director may increase the amount of the bond to a maximum of two hundred fifty thousand dollars for good cause.

(b) The bond shall be in a form satisfactory to the director and shall run to the state for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money in connection with money transmission. In the case of a bond, the aggregate liability of the surety shall not exceed the principal sum of the bond. Any claimant against the licensee may bring suit directly on the bond or the director may bring suit on behalf of any claimant, either in one action or in successive actions.

(2) Upon filing of the report required by section 8-2734 and the information required by subdivision (2)(b) of such section, a licensee shall maintain or increase its surety bond to reflect the total dollar amount of money transmitter transactions by the licensee in this state in the most recent four calendar quarters for which data is available before the date of the filing of the renewal application in accordance with the following table. A licensee may decrease its surety bond in accordance with the following table if the surety bond required is less than the amount of the surety bond on file with the department:

Dollar Amount of Money Transmitter Transactions	Surety Bond Required
\$ 0.00 to \$2,000,000.00	\$100,000.00
\$2,000,000.01 to \$4,000,000.00	\$150,000.00
\$4,000,000.01 to \$6,000,000.00	\$200,000.00
Over \$6,000,000.00	\$250,000.00

(3) If the department determines that a licensee does not maintain a surety bond in the amount required by subsection (2) of this section, the department

shall give written notification to the licensee requiring it to increase the surety bond within thirty days to the amount required by such subsection.

(4) The director may at any time require the filing of a new or supplemental bond in the form as provided in subsection (1) of this section if he or she determines that the bond filed under this section is exhausted or is inadequate for any reason, including, but not limited to, the financial condition of a licensee or an applicant for a license or violations of the Nebraska Money Transmitters Act, any rule and regulation or order thereunder, or any state or federal law applicable to a licensee or an applicant for a license. The new or supplemental bond shall not exceed five hundred thousand dollars.

(5)(a) In lieu of the corporate surety bond or bonds required by this section or of any portion of the principal thereof, the applicant or licensee may deposit, with the director or with such banks or trust companies located in this state or with any federal reserve bank as the applicant or licensee may designate and the director may approve, interest-bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, village, school district, or instrumentality of this state, or guaranteed by this state, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond or portion thereof. The securities shall be deposited and held to secure the same obligations as would the surety bond.

(b) The licensee shall have the right, with the approval of the director, to substitute other securities for those deposited and shall be required to do so on written order of the director made for good cause shown. The licensee shall pay the fees prescribed in section 8-602 for pledging and substitution of securities. So long as the licensee so depositing shall continue solvent and is not in violation of the Nebraska Money Transmitters Act, such licensee shall be permitted to receive the interest or dividends on such deposit.

(c) The safekeeping of such securities and all other expenses incidental to the pledging of such securities shall be paid by the licensee. All such securities shall be subject to sale and transfer and to the disposal of the proceeds by the director only on the order of a court of competent jurisdiction.

(6) The surety bond shall remain in effect until cancellation, which may occur only after thirty days' written notice to the director. Cancellation shall not affect any liability incurred or accrued during the period the surety bond was in effect.

(7) The surety bond shall remain in place for at least five years after the licensee ceases money transmission in this state, except that the director may permit the surety bond to be reduced or eliminated before that time to the extent that the amount of the licensee's payment instruments outstanding in this state are reduced. The director may also permit a licensee to substitute a letter of credit or such other form of security acceptable to the director for the surety bond in place at the time the licensee ceases money transmission in the state.

**Source:** Laws 2013, LB616, § 27; Laws 2017, LB186, § 1.  
Effective date August 24, 2017.

**8-2733 Application; director; duties; powers; onsite investigation; costs; denial of application; reasons; hearing.**

(1) Upon the filing of a complete application under the Nebraska Money Transmitters Act, the director shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant. The director may conduct an onsite investigation of the applicant, the reasonable cost of which shall be borne by the applicant. If the director finds that the applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community and that the applicant has fulfilled the requirements imposed by the act and has paid the required application or license fee, the director shall issue a license to the applicant authorizing the applicant to engage in money transmission in this state. If these requirements have not been met, the director shall deny the application in writing, setting forth the reasons for the denial.

(2) The director shall approve or deny every application for an original license within one hundred twenty days after the date a complete application is submitted, which period may be extended by the written consent of the applicant. The director shall notify the applicant of the date when the application is deemed complete.

(3) Any applicant aggrieved by a denial issued by the director under the act may, at any time within fifteen business days after the date of the denial, request a hearing before the director. The hearing shall be held in accordance with the Administrative Procedure Act and rules and regulations of the department.

(4) If an applicant for a license under the Nebraska Money Transmitters Act does not complete the license application and fails to respond to a notice or notices from the department to correct the deficiency or deficiencies for a period of one hundred twenty days or more after the date the department sends the initial notice to correct the deficiency or deficiencies, the department may deem the application as abandoned and may issue a notice of abandonment of the application to the applicant in lieu of proceedings to deny the application.

**Source:** Laws 2013, LB616, § 33; Laws 2017, LB185, § 1.  
Effective date August 24, 2017.

**Cross References**

**Administrative Procedure Act**, see section 84-920.



## CHAPTER 9

### BINGO AND OTHER GAMBLING

Article.

4. Lotteries and Raffles. 9-433.
7. Gift Enterprises. 9-701.
8. State Lottery. 9-812.

#### ARTICLE 4

#### LOTTERIES AND RAFFLES

Section

9-433. Lottery or raffle; local control; section, how construed.

##### **9-433 Lottery or raffle; local control; section, how construed.**

(1) Any county or incorporated municipality may, by resolution or ordinance, tax, regulate, control, or prohibit any lottery or raffle within the boundaries of such county or the corporate limits of such incorporated municipality. No county may impose a tax or otherwise regulate, control, or prohibit any lottery within the corporate limits of an incorporated municipality. Any tax imposed pursuant to this subsection shall be remitted to the general fund of the county or incorporated municipality imposing such tax.

(2) Nothing in this section shall be construed to authorize any lottery or raffle not otherwise authorized under Nebraska law.

**Source:** Laws 1983, LB 259, § 60; Laws 1984, LB 949, § 69; R.S.Supp.,1984, § 9-195; Laws 1986, LB 1027, § 154; Laws 2017, LB217, § 1.

Operative date August 24, 2017.

#### ARTICLE 7

#### GIFT ENTERPRISES

Section

9-701. Conduct of gift enterprises; conditions; prohibited acts; violation; penalties; venue; enforcement.

##### **9-701 Conduct of gift enterprises; conditions; prohibited acts; violation; penalties; venue; enforcement.**

(1) For purposes of this section:

(a) Financial institution means a bank, savings bank, building and loan association, or savings and loan association, whether chartered by the United States, the Department of Banking and Finance, or a foreign state agency as defined in section 8-101.03; or any other similar organization which is covered by federal deposit insurance;

(b) Gift enterprise means a contest, game of chance, savings promotion raffle, or game promotion which is conducted within the state or throughout the state and other states in connection with the sale of consumer or trade products or

services solely as business promotions and in which the elements of chance and prize are present. Gift enterprise does not include any scheme using the game of bingo or keno; any non-telecommunication-related, player-activated electronic or electromechanical facsimile of any game of chance; or any slot machine of any kind. A gift enterprise shall not utilize pickle cards as defined in section 9-315. Promotional game tickets may be utilized subject to the following:

(i) The tickets utilized shall be manufactured or imprinted with the name of the operator on each ticket;

(ii) The tickets utilized shall not be manufactured with a cost per play printed on them; and

(iii) The tickets utilized shall not be substantially similar to any type of pickle card approved by the Department of Revenue pursuant to section 9-332.01;

(c) Operator means any person, firm, corporation, financial institution, association, governmental entity, or agent or employee thereof who promotes, operates, or conducts a gift enterprise. Operator does not include any nonprofit organization or any agent or employee thereof, except that operator includes any credit union chartered under state or federal law or any agent or employee thereof who promotes, operates, or conducts a gift enterprise; and

(d) Savings promotion raffle means a contest conducted by a financial institution or credit union chartered under state or federal law or any agent or employee thereof in which a chance of winning a designated prize is obtained by the deposit of a specified amount of money in a savings account or other savings program if each entry has an equal chance of winning.

(2) Any operator may conduct a gift enterprise within this state in accordance with this section.

(3) An operator shall not:

(a) Design, engage in, promote, or conduct a gift enterprise in connection with the promotion or sale of consumer products or services in which the winner may be unfairly predetermined or the game may be manipulated or rigged;

(b) Arbitrarily remove, disqualify, disallow, or reject any entry;

(c) Fail to award prizes offered;

(d) Print, publish, or circulate literature or advertising material used in connection with such gift enterprise which is false, deceptive, or misleading; or

(e) Require an entry fee, a payment or promise of payment of any valuable consideration, or any other consideration as a condition of entering a gift enterprise or winning a prize from the gift enterprise, except that a contest, game of chance, or business promotion may require, as a condition of participation, evidence of the purchase of a product or service as long as the purchase price charged for such product or service is not greater than it would have been without the contest, game of chance, or business promotion. For purposes of this section, consideration shall not include (i) filling out an entry blank, (ii) entering by mail with the purchase of postage at a cost no greater than the cost of postage for a first-class letter weighing one ounce or less, (iii) entering by a telephone call to the operator of or for the gift enterprise at a cost no greater than the cost of postage for a first-class letter weighing one ounce or less. When the only method of entry is by telephone, the cost to the entrant of the telephone call shall not exceed the cost of postage for a first-class letter weighing one ounce or less for any reason, including (A) whether any commu-

nication occurred during the call which was not related to the gift enterprise or (B) the fact that the cost of the call to the operator was greater than the cost to the entrant allowed under this section, or (iv) the deposit of money in a savings account or other savings program, regardless of the interest rate earned by such account or program.

(4) An operator shall disclose to participants all terms and conditions of a gift enterprise.

(5)(a) The Department of Revenue may adopt and promulgate rules and regulations necessary to carry out the operation of gift enterprises.

(b) Whenever the department has reason to believe that a gift enterprise is being operated in violation of this section or the department's rules and regulations, it may bring an action in the district court of Lancaster County in the name of and on behalf of the people of the State of Nebraska against the operator of the gift enterprise to enjoin the continued operation of such gift enterprise anywhere in the state.

(6)(a) Any person, firm, corporation, association, or agent or employee thereof who engages in any unlawful acts or practices pursuant to this section or violates any of the rules and regulations promulgated pursuant to this section is guilty of a Class II misdemeanor.

(b) Any person, firm, corporation, association, or agent or employee thereof who violates any provision of this section or any of the rules and regulations promulgated pursuant to this section shall be liable to pay a civil penalty of not more than one thousand dollars imposed by the district court of Lancaster County for each such violation which shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. Each day of continued violation shall constitute a separate offense or violation for purposes of this section.

(7) A financial institution or credit union may limit the number of chances that a participant in a savings promotion raffle may obtain for making the required deposits but shall not limit the number of deposits.

(8) In all proceedings initiated in any court or otherwise under this section, the Attorney General or appropriate county attorney shall prosecute and defend all such proceedings.

(9) This section shall not apply to any activity authorized and regulated under 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, or the State Lottery Act.

**Source:** Laws 1977, LB 38, § 230; Laws 1983, LB 259, § 39; R.S.1943, (1985), § 28-1114; Laws 1986, LB 1027, § 184; Laws 1991, LB 427, § 69; Laws 1993, LB 54, § 1; Laws 1994, LB 694, § 113; Laws 2004, LB 999, § 20; Laws 2011, LB524, § 1; Laws 2015, LB160, § 1; Laws 2017, LB140, § 147.

Operative date August 24, 2017.

#### Cross References

**Nebraska Bingo Act**, see section 9-201.

**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.

**State Lottery Act**, see section 9-801.

**ARTICLE 8**  
**STATE LOTTERY**

## Section

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

**9-812 State Lottery Operation Trust Fund; State Lottery Operation Cash Fund; State Lottery Prize Trust Fund; created; transfers; Nebraska Education Improvement 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 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 Opportunity Grant Fund, the Nebraska Education Improvement Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund as provided in subsection (3) of this section. The dollar amount transferred pursuant to this subsection shall equal the greater of (a) the dollar amount transferred to the funds in fiscal year 2002-03 or (b) any amount which constitutes at least twenty-two percent and no more than twenty-five percent of the dollar amount of the lottery tickets which have been sold on an annualized basis. To the extent that funds are available, the Tax Commissioner and director may authorize a transfer exceeding twenty-five percent of the dollar amount of the lottery tickets sold on an annualized basis.

(3) Of the money available to be transferred to the Education Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska Education Improvement 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 9-1006;

(b) Beginning July 1, 2016, 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 Education Improvement Fund;

(c) 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;

(d) 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

(e) 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 9-1006.

(4) The Nebraska Education Improvement Fund is created. The fund shall consist of money transferred pursuant to subsection (3) of this section, money transferred pursuant to section 85-1920, and any other funds appropriated by the Legislature. The fund shall be allocated, after actual and necessary administrative expenses, as provided in this section for fiscal years 2016-17 through 2020-21. A portion of each allocation may be retained by the agency to which the allocation is made or the agency administering the fund to which the allocation is made for actual and necessary expenses incurred by such agency for administration, evaluation, and technical assistance related to the purposes of the allocation, except that no amount of the allocation to the Nebraska Opportunity Grant Fund may be used for such purposes. On or before December 31, 2019, the Education Committee of the Legislature shall electronically submit recommendations to the Clerk of the Legislature regarding how the fund should be allocated to best advance the educational priorities of the state for the five-year period beginning with fiscal year 2021-22. For fiscal year 2016-17, an amount equal to ten percent of the revenue allocated to the Education Innovation Fund and to the Nebraska Opportunity Grant Fund for fiscal year 2015-16 shall be retained in the Nebraska Education Improvement Fund. For fiscal years 2017-18 through 2020-21, an amount equal to ten percent of the revenue received by the Nebraska Education Improvement Fund in the prior fiscal year shall be retained in the fund. For fiscal years 2016-17 through 2020-21, the remainder of the fund, after payment of any learning community transition aid pursuant to section 79-10,145, shall be allocated as follows:

(a) One percent of the allocated funds to the Expanded Learning Opportunity Grant Fund to carry out the Expanded Learning Opportunity Grant Program Act;

(b) Seventeen percent of the allocated funds to the Department of Education Innovative Grant Fund to be used (i) for competitive innovation grants pursuant to section 79-1054 and (ii) to carry out the purposes of section 79-759;

(c) Nine percent of the allocated funds to the Community College Gap Assistance Program Fund to carry out the community college gap assistance program;

(d) Eight percent of the allocated funds to the Excellence in Teaching Cash Fund to carry out the Excellence in Teaching Act;

(e) Sixty-two percent of the allocated funds to the Nebraska Opportunity Grant Fund to carry out the Nebraska Opportunity Grant Act in conjunction with appropriations from the General Fund; and

(f) Three percent of the allocated funds to fund distance education incentives pursuant to section 79-1337.

(5) Any money in the State Lottery Operation Trust Fund, the State Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, the Nebraska Education Improvement 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 138, § 28; Laws 1993, LB 563, § 24; Laws 1994, LB 647, § 5; Laws 1994, LB 694, § 119; Laws 1994, LB 1066, § 11; Laws 1995, LB 275, § 1; Laws 1995, LB 860, § 1; Laws 1996, LB 900, § 1015; Laws 1996, LB 1069, § 1; Laws 1997, LB 118, § 1; Laws 1997, LB 347, § 1; Laws 1997, LB 710, § 1; Laws 1997, LB 865, § 1; Laws 1998, LB 924, § 16; Laws 1998, LB 1228, § 7; Laws 1998, LB 1229, § 1; Laws 1999, LB 386, § 1; Laws 2000, LB 659, § 2; Laws 2000, LB 1243, § 1; Laws 2001, LB 797, § 1; Laws 2001, LB 833, § 1; Laws 2001, Spec. Sess., LB 3, § 1; Laws 2002, LB 1105, § 418; Laws 2002, LB 1310, § 3; Laws 2002, Second Spec. Sess., LB 1, § 1; Laws 2003, LB 367, § 1; Laws 2003, LB 574, § 21; Laws 2004, LB 1083, § 83; Laws 2004, LB 1091, § 1; Laws 2006, LB 1208, § 1; Laws 2007, LB638, § 16; Laws 2009, LB286, § 4; Laws 2009, LB545, § 1; Laws 2009, LB547, § 1; Laws 2009, First Spec. Sess., LB2, § 1; Laws 2010, LB956, § 1; Laws 2011, LB333, § 1; Laws 2011, LB575, § 7; Laws 2011, LB637, § 22; Laws 2012, LB1079, § 9; Laws 2013, LB6, § 9; Laws 2013, LB366, § 8; Laws 2013, LB495, § 1; Laws 2013, LB497, § 1; Laws 2014, LB967, § 2; Laws 2015, LB519, § 1; Laws 2016, LB930, § 1; Laws 2016, LB1067, § 1; Laws 2017, LB512, § 5.

Operative date May 23, 2017.

#### Cross References

**Excellence in Teaching Act**, see section 79-8,132.

**Expanded Learning Opportunity Grant Program Act**, see section 79-2501.

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska Environmental Trust Act**, see section 81-15,167.

**Nebraska Opportunity Grant Act**, see section 85-1901.

**Nebraska State Funds Investment Act**, see section 72-1260.

## CHAPTER 10

### BONDS

Article.

1. General Provisions. 10-119.

#### ARTICLE 1

#### GENERAL PROVISIONS

Section

- 10-119. Precinct bonds; retirement; taxes; levy and collection; duties of county board and county treasurer.

**10-119 Precinct bonds; retirement; taxes; levy and collection; duties of county board and county treasurer.**

The county board shall, at the usual time of levying taxes in each year, levy a tax upon all the property of the proper precinct, sufficient to pay the annual interest on the bonds and the principal thereof, in accordance with the terms of the proposition under which the bonds were issued. Taxes so levied shall be collected by the county treasurer as other taxes are collected, and the proceeds of the levy shall be retained by the county treasurer and used for the payment of interest on the bonds and the principal thereof as the same become due to the holder thereof, except that in cities having a population of more than fifty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the money so collected shall be forwarded to or retained in the treasury of the city for the payment of bonds and interest for which the money was collected.

**Source:** Laws 1885, c. 8, § 2, p. 95; R.S.1913, § 384; Laws 1921, c. 191, § 2, p. 710; C.S.1922, § 301; C.S.1929, § 11-120; R.S.1943, § 10-119; Laws 2001, LB 420, § 7; Laws 2017, LB113, § 1.  
Effective date August 24, 2017.





## CHAPTER 12 CEMETERIES

Article.

1. Wyuka Cemetery. 12-101.
4. Cemeteries in Cities of Less than 25,000 Population and Villages. 12-401.
11. Burial Pre-Need Sales. 12-1113, 12-1114.
12. Unmarked Human Burial Sites. 12-1205.
13. State Veteran Cemetery System. 12-1301.

### ARTICLE 1

#### WYUKA CEMETERY

Section

12-101. Wyuka Cemetery; declared a public charitable corporation; powers; trustees; appointment; terms; vacancies; reports; retirement plan reports; duties.

**12-101 Wyuka Cemetery; declared a public charitable corporation; powers; trustees; appointment; terms; vacancies; reports; retirement plan reports; duties.**

(1) The cemetery in Lincoln, Nebraska, known as Wyuka Cemetery, is hereby declared to be a public charitable corporation. The general control and management of the affairs of such cemetery shall be vested in a board of three trustees until July 1, 2009, and thereafter shall be vested in a board of five trustees. The trustees shall serve without compensation and shall be a body corporate to be known as Wyuka Cemetery, with power to sue and be sued, to contract and to be contracted with, and to acquire, hold, and convey both real and personal property for all purposes consistent with the provisions of sections 12-101 to 12-105, and shall have the power of eminent domain to be exercised in the manner provided in section 12-201.

(2) The trustees of Wyuka Cemetery shall have the power, by resolution duly adopted by a majority vote, to authorize one of their number to sign a petition for paving, repaving, curbing, recurbing, grading, changing grading, guttering, resurfacing, relaying existing pavement, or otherwise improving any street, streets, alley, alleys, or public ways or grounds abutting cemetery property. When such improvements have been ordered, the trustees shall pay, from funds of the cemetery, such special taxes or assessments as may be properly determined.

(3) The trustees of Wyuka Cemetery shall be appointed by the Governor of the State of Nebraska at the expiration of each trustee's term of office. The two trustees appointed for their initial terms of office beginning July 1, 2009, shall be appointed by the Governor to serve a five-year term and a six-year term, respectively. Thereafter, each of the five trustees shall be appointed by the Governor for a term of six years. In the event of a vacancy occurring among the members of the board, the vacancy shall be filled by appointment by the Governor, and such appointment shall continue for the unexpired term.

(4) The board of trustees of Wyuka Cemetery shall file with the Auditor of Public Accounts, on or before the second Tuesday in June of each year, an

itemized report of all the receipts and expenditures in connection with its management and control of the cemetery.

(5) The trustees of Wyuka Cemetery shall have the power to provide, in their discretion, retirement benefits for present and future employees of the cemetery, and to establish, participate in, and administer plans for the benefit of its employees or its employees and their dependents, which may provide disability, hospitalization, medical, surgical, accident, sickness and life insurance coverage, or any one or more coverages, and which shall be purchased from a corporation or corporations authorized and licensed by the Department of Insurance.

(6) Beginning December 31, 1998, through December 31, 2017:

(a) The trustees shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and
- (viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the trustees may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits; and

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the trustees shall cause to be prepared an annual report and shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the trustees do not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, Wyuka Cemetery. All costs of the audit shall be paid by Wyuka Cemetery. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organiza-

tion or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

**Source:** Laws 1927, c. 197, § 1, p. 560; C.S.1929, § 13-101; R.S.1943, § 12-101; Laws 1953, c. 15, § 1, p. 81; Laws 1959, c. 28, § 1, p. 179; Laws 1967, c. 38, § 1, p. 167; Laws 1998, LB 1191, § 3; Laws 1999, LB 795, § 2; Laws 2009, LB498, § 1; Laws 2011, LB252, § 1; Laws 2011, LB474, § 2; Laws 2014, LB759, § 3; Laws 2017, LB415, § 2.  
Effective date May 24, 2017.

#### ARTICLE 4

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

#### Section

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

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

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

**Source:** Laws 1917, c. 207, § 1, p. 496; C.S.1922, § 4492; C.S.1929, § 13-401; R.S.1943, § 12-401; Laws 2008, LB995, § 1; Laws 2017, LB113, § 2; Laws 2017, LB463, § 1.  
Effective date August 24, 2017.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB113, section 2, with LB463, section 1, to reflect all amendments.

#### ARTICLE 11

### BURIAL PRE-NEED SALES

#### Section

12-1113. Trust funds; distributions; conditions; accumulation.

## Section

12-1114. Pre-need seller; trust funds; retain cost-of-living amount.

**12-1113 Trust funds; distributions; conditions; accumulation.**

(1) After making the calculations required by section 12-1114, any amounts exceeding trust principal, except income earned in the current calendar year, may be distributed to the pre-need seller by the trustee at the pre-need seller's request.

(2) All remaining funds held in trust, including cost-of-living amounts retained as required by section 12-1114, shall be governed by the following:

(a) When the funds held in trust are for the purchase of a crypt or niche in a mausoleum, columbarium, or lawn crypt which is to be constructed or is being constructed, the trustee shall distribute the funds held in trust for such purpose to the pre-need seller as follows:

(i) Twenty-five percent of the funds held in trust shall be paid over to the pre-need seller upon written notification from the pre-need seller, verified in writing by the pre-need seller's contractor or person in charge of the construction, that twenty-five percent of the construction of the mausoleum, columbarium, or lawn crypt has been substantially completed;

(ii) Thirty-three and one-third percent of the funds remaining in trust shall be paid over to the pre-need seller upon written notification from the pre-need seller, verified in writing by the pre-need seller's contractor or person in charge of construction, that fifty percent of the construction of the mausoleum, columbarium, or lawn crypt has been substantially completed;

(iii) Fifty percent of the funds remaining in trust shall be paid over to the pre-need seller upon written notification from the pre-need seller, verified in writing by the pre-need seller's contractor or person in charge of construction, that seventy-five percent of the construction of the mausoleum, columbarium, or lawn crypt has been substantially completed; and

(iv) All funds remaining in trust shall be paid over to the pre-need seller upon written notification from the pre-need seller, verified in writing by the pre-need seller's contractor or person in charge of construction, that the construction of the mausoleum, columbarium, or lawn crypt has been substantially completed;

(b) When the funds are held in trust by reason of a pre-need sale which is not included in subdivision (2)(a) of this section, the trustee shall pay over to the pre-need seller the funds held in trust upon receiving written notification from the pre-need seller that delivery of the merchandise has been completed or services have been performed for which the funds were placed in trust;

(c) Upon cancellation of a pre-need sale, unless the pre-need purchaser has designated the trust as irrevocable pursuant to section 12-1106, the pre-need seller shall give written notification to the trustee and the trustee shall, within ninety days, pay over to the pre-need purchaser an amount equal to the amount required to be held in trust by the pre-need seller for that pre-need purchaser after deducting any reasonable charges made by the trustee caused by the cancellation and then any balance remaining in the pre-need purchaser's trust account shall immediately be paid over to the pre-need seller;

(d) Upon cancellation of a pre-need sale in which the funds were designated by the pre-need purchaser as irrevocable pursuant to section 12-1106, the trustee shall immediately pay over to the pre-need seller any amounts otherwise

excludable from trust under section 12-1104 if such amounts have not previously been retained by the pre-need seller. Thereafter, the amount required to be held in trust shall be computed by the trustee and the amount so computed shall be held by the trustee separate from the trust in an individual account in the name of the pre-need purchaser and such account shall:

(i) Be held until the death of the person for whom the pre-need sale was entered into, at which time all funds in the individual account, less any reasonable charges made by the trustee which were caused by such cancellation, shall, within ninety days, be paid to the pre-need purchaser or his or her estate; or

(ii) Be held until the trustee receives written notification from the pre-need purchaser to transfer all of the funds held in the individual account, less any reasonable charges made by the trustee which were caused by such cancellation, to another irrevocable trust established by another licensed pre-need seller as a result of a pre-need sale made by the second pre-need seller to the canceling pre-need purchaser. Such transfer shall take place within ninety days after such written notification is received by the original pre-need seller.

The balance remaining in such pre-need purchaser's trust account after transfer of the computed amount to the individual account shall be paid over to the pre-need seller;

(e) Upon default, the pre-need seller shall be entitled to retain in trust the funds held in trust attributable to the defaulted pre-need sale until notice of cancellation by the pre-need purchaser is received by the pre-need seller or until the death of the person for whom the pre-need sale was entered into, whichever occurs first. In the event of default, the death of the person for whom the pre-need sale was entered into, absent prior notification of cancellation, shall be construed as a cancellation of that pre-need sale;

(f) Receipt of the written notification by the trustee and distribution of the funds after receipt of such written notification shall relieve the trustee of any liability for failure to properly administer the funds held in trust. Failure of the trustee to obtain such written notification may subject the trustee to liability for actual damages limited to the amount of the funds which the trustee erroneously distributed; and

(g) In the administration of the individual trust accounts or the trust accounts held under a master trust agreement, the trustee shall be permitted to pay all of the reasonable costs incurred in the administration of the trusts, including any state or federal income taxes payable by the trusts. The payment of all costs and expenses, including taxes, shall be paid from the trust income and shall be deducted prior to the distribution of such income as provided in subsection (1) of this section. In the event that the income is not sufficient to pay all of such costs, expenses, and taxes, the pre-need seller shall be responsible for such payment out of its own separate funds.

**Source:** Laws 1986, LB 643, § 13; Laws 2017, LB239, § 1.  
Effective date August 24, 2017.

**12-1114 Pre-need seller; trust funds; retain cost-of-living amount.**

(1) To offset increases in the cost of living as the same may affect the trust accounts, the pre-need seller shall compute each year the total amount of the trust principal of each trust account determined as of December 31 of the

immediately preceding year, and then multiply such amount by the percentage increase in the National Consumer Price Index for such year. The amount so determined shall be the amount of the current year's income that is required to be retained in trust by the trustee. Such amount is then considered to be trust principal and shall be retained before any income may be distributed as provided in subsection (1) of section 12-1113.

(2) If there is insufficient income in any given year to fully fund the amount required to be retained pursuant to subsection (1) of this section:

(a) As much of the required amount as possible shall be retained;

(b) The shortage shall be recouped from the income in subsequent years before such income may be distributed as provided in subsection (1) of section 12-1113; and

(c) The calculation required under subsection (1) of this section for subsequent years shall be computed as though the full amount required to be retained for each year had been retained.

(3) If publication of the National Consumer Price Index is discontinued, the director shall select a comparable index for the purposes of determining such percentage increase in the cost of living and notify all licensed pre-need sellers of the index selected.

**Source:** Laws 1986, LB 643, § 14; Laws 2017, LB239, § 2.  
Effective date August 24, 2017.

## ARTICLE 12

### UNMARKED HUMAN BURIAL SITES

#### Section

12-1205. Person discovering remains or goods; duties; violation; penalty.

#### **12-1205 Person discovering remains or goods; duties; violation; penalty.**

(1) Any person who encounters or discovers human skeletal remains or burial goods associated with an unmarked human burial in or on the ground shall immediately cease any activity which may cause further disturbance of the unmarked human burial and shall within forty-eight hours report the presence and location of such remains or goods to a local law enforcement officer in the county in which the remains or goods are found. Any person who knowingly fails to make such a report shall be guilty of a Class III misdemeanor.

(2) If human skeletal remains or burial goods associated with an unmarked human burial in or on the ground are discovered by any employee, contractor, or agent of the Department of Transportation in conjunction with highway construction, any construction in the area immediately adjacent to such remains or goods shall cease. The department or any of its employees, contractors, or agents shall within forty-eight hours of the discovery of the remains or goods report the presence and location of the remains or goods to a local law enforcement officer in the county in which the remains or goods are found. Any remains or goods may then be removed from the site following an examination by the appropriate agency in accordance with section 39-1363 and any applicable federal requirements. Following removal, the remains or goods shall be disposed of in accordance with the Unmarked Human Burial Sites and Skeletal Remains Protection Act. The construction project may continue once the remains or goods have been removed.

**Source:** Laws 1989, LB 340, § 5; Laws 2017, LB339, § 72.  
Operative date July 1, 2017.

## ARTICLE 13

## STATE VETERAN CEMETERY SYSTEM

## Section

12-1301. Director of Veterans' Affairs; powers and duties; Veteran Cemetery Construction Fund; Nebraska Veteran Cemetery System Endowment Fund; Nebraska Veteran Cemetery System Operation Fund; created; investment.

**12-1301 Director of Veterans' Affairs; powers and duties; Veteran Cemetery Construction Fund; Nebraska Veteran Cemetery System Endowment Fund; Nebraska Veteran Cemetery System Operation Fund; created; investment.**

(1) The Director of Veterans' Affairs may establish and operate a state veteran cemetery system consisting of a facility in Box Butte County, a facility in Sarpy County, and the Nebraska Veterans' Memorial Cemetery in Hall County. The director may seek and expend private, state, and federal funds for the establishment, construction, maintenance, administration, and operation of the cemetery system as provided in this section. Any gift, bequest, or devise of real property and any acquisition of real property with the proceeds of a donation, gift, bequest, devise, or grant from an individual, an organization, a corporation, a foundation, or a similar entity or from a nonfederal governmental agency for the cemetery system shall be subject to the approval requirements of section 81-1108.33 notwithstanding the value of the real property. All funds received for the construction of the cemetery system shall be remitted to the State Treasurer for credit to the Veteran Cemetery Construction Fund. Any funds remaining in the Veteran Cemetery Construction Fund following the completion of construction of the three facilities comprising the state veteran cemetery system shall upon such completion be transferred to the Nebraska Veteran Cemetery System Endowment Fund, and the Veteran Cemetery Construction Fund shall thereafter terminate.

(2)(a) A trust fund to be known as the Nebraska Veteran Cemetery System Endowment Fund is hereby created. The fund shall consist of:

(i) Gifts, bequests, grants, or contributions from private or public sources designated for the maintenance, administration, or operation of the state veteran cemetery system;

(ii) Any funds transferred from the Veteran Cemetery Construction Fund following the completion of construction of the three facilities comprising the state veteran cemetery system; and

(iii) Following the termination of the Veteran Cemetery Construction Fund, any funds received by the state from any source for the state veteran cemetery system.

(b) No revenue from the General Fund shall be remitted to the Nebraska Veteran Cemetery System Endowment Fund. The Legislature shall not appropriate or transfer money from the Nebraska Veteran Cemetery System Endowment Fund for any purpose other than as provided in this section. Any money in the Nebraska Veteran Cemetery System Endowment Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. No portion of the principal of the Nebraska Veteran Cemetery System Endowment Fund shall be expended for any purpose except investment pursuant to this subdivision. All investment earnings from the Nebraska Veteran Cemetery

System Endowment Fund shall be credited on a quarterly basis to the Nebraska Veteran Cemetery System Operation Fund.

(3) There is hereby created the Nebraska Veteran Cemetery System Operation Fund. Money in the fund shall be used for the operation, administration, and maintenance of the state veteran cemetery system. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(4) The director may make formal application to the federal government regarding federal financial assistance for the construction of any of the facilities comprising the state veteran cemetery system which is located in a county with a population of less than one hundred thousand persons when he or she determines that the requirements for such assistance have been met.

(5) The director may make formal application to the federal government regarding financial assistance for the construction of any facility comprising a portion of the state veteran cemetery system located in a county with a population of more than one hundred thousand persons when sufficient funds have been remitted to the Nebraska Veteran Cemetery System Endowment Fund such that (a) the projected annual earnings from such fund available for transfer to the Nebraska Veteran Cemetery System Operation Fund plus (b) the projected annual value of formal agreements that have been entered into between the state and any political subdivisions or private entities to subsidize or undertake the operation, administration, or maintenance of any of the facilities within the state veteran cemetery system, has a value that is sufficient to fund the operation, administration, and maintenance of any cemetery created pursuant to this subsection.

(6) The director may expend such funds as may be available for any of the purposes authorized in this section.

(7) The director, with the approval of the Governor, may enter into agreements for cemetery construction, administration, operation, or maintenance with qualified persons, political subdivisions, or business entities. The director shall provide lots in the cemetery system for the interment of deceased veterans as defined by the National Cemetery Administration of the United States Department of Veterans Affairs. The director shall provide lots for the interment of those veterans' spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support. Section 12-501 does not apply to the state veteran cemetery system.

(8) The Veteran Cemetery Construction Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The balance in the Veteran Cemetery Construction Fund shall be transferred to the General Fund on or before June 30, 2018, as directed by the budget administrator of the budget division of the Department of Administrative Services.

(9) The director may adopt and promulgate rules and regulations to carry out this section. The rules and regulations shall include requirements for proof of residency, cost of burial if any, and standards for cemeteries, including decorations and headstones.

**Source:** Laws 1999, LB 84, § 1; Laws 2004, LB 1231, § 1; Laws 2005, LB 54, § 2; Laws 2005, LB 227, § 1; Laws 2006, LB 996, § 1; Laws



**STATE VETERAN CEMETERY SYSTEM**

**§ 12-1301**

2009, LB154, § 1; Laws 2011, LB264, § 1; Laws 2017, LB331,  
§ 18.

Effective date May 16, 2017.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.



## CHAPTER 13

### CITIES, COUNTIES, AND OTHER POLITICAL SUBDIVISIONS

Article.

3. Political Subdivisions; Particular Classes and Projects.
  - (d) Home-Delivered Meals. 13-308.
4. Political Subdivisions; Laws Applicable to All. 13-402.
5. Budgets.
  - (a) Nebraska Budget Act. 13-506 to 13-513.
  - (d) Budget Limitations. 13-518 to 13-520.
9. Political Subdivisions Tort Claims Act. 13-910, 13-912.
12. Nebraska Public Transportation Act. 13-1203 to 13-1212.
27. Civic and Community Center Financing Act. 13-2705.
32. Property Assessed Clean Energy Act. 13-3201 to 13-3211.

#### ARTICLE 3

#### POLITICAL SUBDIVISIONS; PARTICULAR CLASSES AND PROJECTS

##### (d) HOME-DELIVERED MEALS

Section

13-308. Municipal corporations; powers.

##### (d) HOME-DELIVERED MEALS

#### **13-308 Municipal corporations; powers.**

Any municipal corporation may contract with any person and provide funds for home-delivered meals for the elderly and senior volunteer programs.

**Source:** Laws 1975, LB 307, § 1; R.S.1943, (1983), § 18-1730; Laws 2017, LB417, § 1.

Effective date August 24, 2017.

#### ARTICLE 4

#### POLITICAL SUBDIVISIONS; LAWS APPLICABLE TO ALL

Section

13-402. Political subdivisions, state agency; authorized to file petition in United States Bankruptcy Court; limitation; governing body; duties.

#### **13-402 Political subdivisions, state agency; authorized to file petition in United States Bankruptcy Court; limitation; governing body; duties.**

(1) Any county, city, village, school district, agency of the state government, drainage district, sanitary and improvement district, or other political subdivision of the State of Nebraska is hereby permitted, authorized, and given the power to file a petition in the United States Bankruptcy Court under 11 U.S.C. chapter 9 and any acts amendatory thereto and supplementary thereof and to incur and pay the expenses incident to the consummation of a plan of adjustment of debts as contemplated by such petition.

(2)(a) The authority and power to file a petition provided for in subsection (1) of this section shall not apply to any city or village that, at the time of its

governing body authorizing the filing of such petition, has its defined benefit retirement plan, if any, with a funded ratio of the actuarial value of assets less than fifty-one and sixty-five hundredths percent for any such petition to be filed during the period between January 1, 2020, and January 1, 2023; fifty-four and forty-one hundredths percent for any such petition to be filed during the period between January 1, 2023, and January 1, 2026; fifty-eight and twenty-one hundredths percent for any such petition to be filed during the period between January 1, 2026, and January 1, 2029; sixty-three and forty-one hundredths percent for any such petition to be filed during the period between January 1, 2029, and January 1, 2032; seventy and seventy-one hundredths percent for any such petition to be filed during the period between January 1, 2032, and January 1, 2035; eighty and sixty-one hundredths percent for any such petition to be filed during the period between January 1, 2035, and January 1, 2038; and ninety percent thereafter.

(b) Within ninety days prior to taking action authorizing the filing of such petition, the governing body of any city or village that has a defined benefit retirement plan shall conduct an actuarial valuation to determine the funded ratio of such defined benefit retirement plan. Such determination shall be prima facie evidence in establishing the authority of the city or village to exercise authority under this section.

(c)(i) A city or village that does not have a defined benefit retirement plan may by ordinance declare and affirm that its general obligation bonds, whether existing before, after, or at the time of such ordinance, shall, unless otherwise provided in the related authorizing measure, be equally and ratably secured by a statutory lien on all ad valorem taxes levied and to be levied from year to year by such city or village and on all proceeds derived therefrom. The statutory lien authorized hereunder shall be deemed to attach and be continuously perfected from the time the bonds are issued without further action or authorization by the city or village. The statutory lien is valid and binding from the time the bonds are issued without any physical delivery thereof or further act required. No filing need be made under the Uniform Commercial Code or otherwise to perfect the statutory lien on any ad valorem taxes or proceeds derived therefrom in favor of any general obligation bonds. Bonds so secured shall have a first priority lien on such ad valorem taxes so levied and on all proceeds derived therefrom and shall have priority against all parties having claims of contract or tort or otherwise against the city or village, whether or not the parties have notice thereof. The absence of such declaration or affirmation shall not reduce or degrade the priority or secured status of such bonds otherwise existing under law.

(ii) For purposes of this subdivision, statutory lien shall have the meaning given to that term under 11 U.S.C. 101(53) of the federal Bankruptcy Reform Act of 1994, as it existed on August 24, 2017.

(d) An actuary performing actuarial valuations pursuant to this subsection shall be a member of the American Academy of Actuaries and shall meet the academy's qualification standards to render a statement of actuarial opinion.

**Source:** Laws 1981, LB 327, § 2; R.S.1943, (1986), § 77-2419; Laws 1989, LB 14, § 1; Laws 2017, LB72, § 1.  
Effective date August 24, 2017.

**ARTICLE 5**  
**BUDGETS**

(a) NEBRASKA BUDGET ACT

Section

- 13-506. Proposed budget statement; notice; hearing; adoption; certify to board; exceptions; file with auditor.  
 13-508. Adopted budget statement; certified taxable valuation; levy.  
 13-509. County assessor; certify taxable value; when.  
 13-511. Revision of adopted budget statement; when; supplemental funds; hearing; notice; warrants; issuance; correction.  
 13-513. Auditor; request information; late fee; failure to provide information; auditor powers.

(d) BUDGET LIMITATIONS

- 13-518. Terms, defined.  
 13-519. Governmental unit; adoption of budget; limitations; additional increases authorized; procedure.  
 13-520. Limitations; not applicable to certain restricted funds.

(a) NEBRASKA BUDGET ACT

**13-506 Proposed budget statement; notice; hearing; adoption; certify to board; exceptions; file with auditor.**

(1) Each governing body shall each year or biennial period conduct a public hearing on its proposed budget statement. Notice of place and time of such hearing, together with a summary of the proposed budget statement, shall be published at least four calendar days prior to the date set for hearing in a newspaper of general circulation within the governing body's jurisdiction. For purposes of such notice, the four calendar days shall include the day of publication but not the day of hearing. When the total operating budget, not including reserves, does not exceed ten thousand dollars per year or twenty thousand dollars per biennial period, the proposed budget summary may be posted at the governing body's principal headquarters. After such hearing, the proposed budget statement shall be adopted, or amended and adopted as amended, and a written record shall be kept of such hearing. The amount to be received from personal and real property taxation shall be certified to the levying board after the proposed budget statement is adopted or is amended and adopted as amended. If the levying board represents more than one county, a member or a representative of the governing board shall, upon the written request of any represented county, appear and present its budget at the hearing of the requesting county. The certification of the amount to be received from personal and real property taxation shall specify separately (a) the amount to be applied to the payment of principal or interest on bonds issued by the governing body and (b) the amount to be received for all other purposes. If the adopted budget statement reflects a change from that shown in the published proposed budget statement, a summary of such changes shall be published within twenty calendar days after its adoption in the manner provided in this section, but without provision for hearing, setting forth the items changed and the reasons for such changes.

(2) Upon approval by the governing body, the budget shall be filed with the auditor. The auditor may review the budget for errors in mathematics, improper accounting, and noncompliance with the Nebraska Budget Act or sections 13-518 to 13-522. If the auditor detects such errors, he or she shall immediately

notify the governing body of such errors. The governing body shall correct any such error as provided in section 13-511. Warrants for the payment of expenditures provided in the budget adopted under this section shall be valid notwithstanding any errors or noncompliance for which the auditor has notified the governing body.

**Source:** Laws 1969, c. 145, § 5, p. 672; Laws 1971, LB 129, § 2; Laws 1973, LB 95, § 1; R.S.1943, (1983), § 23-925; Laws 1993, LB 310, § 5; Laws 1996, LB 1362, § 2; Laws 1997, LB 271, § 11; Laws 1999, LB 86, § 4; Laws 2002, LB 568, § 3; Laws 2013, LB111, § 4; Laws 2017, LB151, § 1.  
Effective date April 28, 2017.

### **13-508 Adopted budget statement; certified taxable valuation; levy.**

(1) After publication and hearing thereon and within the time prescribed by law, each governing body, except as provided in subsection (3) of this section, shall file with and certify to the levying board or boards on or before September 20 of each year or September 20 of the final year of a biennial period and file with the auditor a copy of the adopted budget statement which complies with sections 13-518 to 13-522 or 79-1023 to 79-1030, together with the amount of the tax required to fund the adopted budget, setting out separately (a) the amount to be levied for the payment of principal or interest on bonds issued by the governing body and (b) the amount to be levied for all other purposes. Proof of publication shall be attached to the statements. For fiscal years prior to fiscal year 2017-18, learning communities shall also file a copy of such adopted budget statement with member school districts on or before September 1 of each year. If the prime rate published by the Federal Reserve Board is ten percent or more at the time of the filing and certification required under this subsection, the governing body, in certifying the amount required, may make allowance for delinquent taxes not exceeding five percent of the amount required plus the actual percentage of delinquent taxes for the preceding tax year or biennial period and for the amount of estimated tax loss from any pending or anticipated litigation which involves taxation and in which tax collections have been or can be withheld or escrowed by court order. For purposes of this section, anticipated litigation shall be limited to the anticipation of an action being filed by a taxpayer who or which filed a similar action for the preceding year or biennial period which is still pending. Except for such allowances, a governing body shall not certify an amount of tax more than one percent greater or lesser than the amount determined under section 13-505.

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

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

(b) For fiscal years prior to fiscal year 2017-18, learning communities shall do such filing and certification on or before September 1 of each year.

**Source:** Laws 1969, c. 145, § 7, p. 672; Laws 1971, LB 129, § 3; Laws 1977, LB 391, § 1; Laws 1979, LB 178, § 1; R.S.1943, (1983), § 23-927; Laws 1989, LB 643, § 1; Laws 1992, LB 1063, § 4; Laws 1992, Second Spec. Sess., LB 1, § 4; Laws 1993, LB 310,

§ 6; Laws 1993, LB 734, § 19; Laws 1995, LB 452, § 2; Laws 1996, LB 299, § 11; Laws 1996, LB 900, § 1018; Laws 1996, LB 1362, § 3; Laws 1997, LB 269, § 10; Laws 1998, LB 306, § 2; Laws 1998, Spec. Sess., LB 1, § 1; Laws 1999, LB 86, § 5; Laws 2002, LB 568, § 4; Laws 2006, LB 1024, § 2; Laws 2008, LB1154, § 1; Laws 2009, LB166, § 1; Laws 2013, LB111, § 5; Laws 2016, LB1067, § 2; Laws 2017, LB432, § 1.  
Operative date July 1, 2017.

**13-509 County assessor; certify taxable value; when.**

(1) On or before August 20 of each year, the county assessor shall certify to each governing body or board empowered to levy or certify a tax levy the current taxable value of the taxable real and personal property subject to the applicable levy. The certification shall be provided to the governing body or board (a) by mail if requested by the governing body or board, (b) electronically, or (c) by listing such certification on the county assessor's web site.

(2) Current taxable value for real property shall mean the value established by the county assessor and equalized by the county board of equalization and the Tax Equalization and Review Commission. Current taxable value for tangible personal property shall mean the net book value reported by the taxpayer and certified by the county assessor.

(3) The valuation of any real and personal property annexed by a political subdivision on or after August 1 shall be considered in the taxable valuation of the annexing political subdivision the following year.

**Source:** Laws 1977, LB 391, § 3; Laws 1979, LB 187, § 256; Laws 1984, LB 835, § 1; R.S.Supp., 1986, § 23-927.01; Laws 1991, LB 829, § 1; Laws 1992, LB 1063, § 5; Laws 1992, Second Spec. Sess., LB 1, § 5; Laws 1993, LB 734, § 20; Laws 1994, LB 902, § 12; Laws 1995, LB 452, § 3; Laws 1997, LB 271, § 12; Laws 1997, LB 397, § 2; Laws 1998, LB 306, § 3; Laws 1999, LB 194, § 1; Laws 1999, LB 813, § 1; Laws 2005, LB 261, § 1; Laws 2009, LB166, § 2; Laws 2010, LB1071, § 1; Laws 2017, LB217, § 2.  
Operative date August 24, 2017.

**13-511 Revision of adopted budget statement; when; supplemental funds; hearing; notice; warrants; issuance; correction.**

(1) Unless otherwise provided by law, whenever during the current fiscal year or biennial period it becomes apparent to a governing body that (a) there are circumstances which could not reasonably have been anticipated at the time the budget for the current year or biennial period was adopted, (b) the budget adopted violated sections 13-518 to 13-522, such that the revenue of the current fiscal year or biennial period for any fund thereof will be insufficient, additional expenses will be necessarily incurred, or there is a need to reduce the budget requirements to comply with sections 13-518 to 13-522, or (c) the governing body has been notified by the auditor of a mathematical or accounting error or noncompliance with the Nebraska Budget Act, such governing body may propose to revise the previously adopted budget statement and shall conduct a public hearing on such proposal. The public hearing requirement shall not apply to emergency expenditures pursuant to section 81-829.51.

(2) Notice of the time and place of the hearing shall be published at least four calendar days prior to the date set for hearing in a newspaper of general circulation within the governing body's jurisdiction. For purposes of such notice, the four calendar days shall include the day of publication but not the day of hearing. Such published notice shall set forth (a) the time and place of the hearing, (b) the amount in dollars of additional or reduced money required and for what purpose, (c) a statement setting forth the nature of the unanticipated circumstances and, if the budget requirements are to be increased, the reasons why the previously adopted budget of expenditures cannot be reduced during the remainder of the current year or biennial period to meet the need for additional money in that manner, (d) a copy of the summary of the originally adopted budget previously published, and (e) a copy of the summary of the proposed revised budget.

(3) At such hearing any taxpayer may appear or file a written statement protesting any application for additional money. A written record shall be kept of all such hearings.

(4) Upon conclusion of the public hearing on the proposed revised budget and approval of the proposed revised budget by the governing body, the governing body shall file with the county clerk of the county or counties in which such governing body is located, with the learning community coordinating council for fiscal years prior to fiscal year 2017-18 for school districts that are members of learning communities, and with the auditor, a copy of the revised budget, as adopted. The governing body may then issue warrants in payment for expenditures authorized by the adopted revised budget. Such warrants shall be referred to as registered warrants and shall be repaid during the next fiscal year or biennial period from funds derived from taxes levied therefor.

(5) Within thirty calendar days after the adoption of the budget under section 13-506, a governing body may, or within thirty calendar days after notification of an error by the auditor, a governing body shall, correct an adopted budget which contains a clerical, mathematical, or accounting error which does not affect the total amount budgeted by more than one percent or increase the amount required from property taxes. No public hearing shall be required for such a correction. After correction, the governing body shall file a copy of the corrected budget with the county clerk of the county or counties in which such governing body is located and with the auditor. The governing body may then issue warrants in payment for expenditures authorized by the budget.

**Source:** Laws 1969, c. 145, § 9, p. 673; R.S.1943, (1983), § 23-929; Laws 1993, LB 734, § 22; Laws 1996, LB 299, § 12; Laws 1999, LB 86, § 6; Laws 2000, LB 1116, § 8; Laws 2001, LB 797, § 2; Laws 2002, LB 568, § 5; Laws 2006, LB 1024, § 3; Laws 2015, LB283, § 1; Laws 2016, LB1067, § 3; Laws 2017, LB151, § 2.  
Effective date April 28, 2017.

**13-513 Auditor; request information; late fee; failure to provide information; auditor powers.**

(1) The auditor shall, on or before August 1 each year, request information from each governing body in a form prescribed by the auditor regarding (a) trade names, corporate names, or other business names under which the governing body operates and (b) agreements to which the governing body is a



party under the Interlocal Cooperation Act and the Joint Public Agency Act. Each governing body shall provide such information to the auditor on or before September 20.

(2) Information requested pursuant to this section that is not received by the auditor on or before September 20 shall be delinquent. The auditor shall notify the political subdivision by facsimile transmission, email, or first-class mail of such delinquency. Beginning on the day that such notification is sent, the auditor may assess the political subdivision a late fee of twenty dollars per day for each calendar day the requested information remains delinquent. The total late fee assessed to a political subdivision under this section shall not exceed two thousand dollars per delinquency.

(3) The auditor shall remit to the State Treasurer for credit to the Auditor of Public Accounts Cash Fund a remedial fee sufficient to reimburse the direct costs of administering and enforcing this section, but such remedial fee shall not exceed one hundred dollars from any late fee received under this section. The auditor shall remit any late fee amount in excess of one hundred dollars received under this section to the State Treasurer to be distributed in accordance with Article VII, section 5, of the Constitution of Nebraska.

(4) If a political subdivision fails to provide the information requested under this section on or before September 20, the auditor may, at his or her discretion, audit such political subdivision. The expense of such audit shall be paid by the political subdivision.

**Source:** Laws 2004, LB 939, § 2; Laws 2013, LB192, § 1; Laws 2017, LB151, § 3.  
Effective date April 28, 2017.

#### Cross References

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

### (d) BUDGET LIMITATIONS

#### **13-518 Terms, defined.**

For purposes of sections 13-518 to 13-522:

(1) Allowable growth means (a) for governmental units other than community colleges, the percentage increase in taxable valuation in excess of the base limitation established under section 77-3446, if any, due to improvements to real property as a result of new construction, additions to existing buildings, any improvements to real property which increase the value of such property, and any increase in valuation due to annexation and any personal property valuation over the prior year and (b) for community colleges, the percentage increase in excess of the base limitation, if any, in full-time equivalent students from the second year to the first year preceding the year for which the budget is being determined;

(2) Capital improvements means (a) acquisition of real property or (b) acquisition, construction, or extension of any improvements on real property;

(3) Governing body has the same meaning as in section 13-503;

(4) Governmental unit means every political subdivision which has authority to levy a property tax or authority to request levy authority under section

77-3443 except sanitary and improvement districts which have been in existence for five years or less and school districts;

(5) Qualified sinking fund means a fund or funds maintained separately from the general fund to pay for acquisition or replacement of tangible personal property with a useful life of five years or more which is to be undertaken in the future but is to be paid for in part or in total in advance using periodic payments into the fund. The term includes sinking funds under subdivision (13) of section 35-508 for firefighting and rescue equipment or apparatus;

(6) Restricted funds means (a) property tax, excluding any amounts refunded to taxpayers, (b) payments in lieu of property taxes, (c) local option sales taxes, (d) motor vehicle taxes, (e) state aid, (f) transfers of surpluses from any user fee, permit fee, or regulatory fee if the fee surplus is transferred to fund a service or function not directly related to the fee and the costs of the activity funded from the fee, (g) any funds excluded from restricted funds for the prior year because they were budgeted for capital improvements but which were not spent and are not expected to be spent for capital improvements, (h) the tax provided in sections 77-27,223 to 77-27,227 beginning in the second fiscal year in which the county will receive a full year of receipts, and (i) any excess tax collections returned to the county under section 77-1776. Funds received pursuant to the nameplate capacity tax levied under section 77-6203 for the first five years after a renewable energy generation facility has been commissioned are nonrestricted funds; and

(7) State aid means:

(a) For all governmental units, state aid paid pursuant to sections 60-3,202 and 77-3523 and reimbursement provided pursuant to section 77-1239;

(b) For municipalities, state aid to municipalities paid pursuant to sections 18-2605, 39-2501 to 39-2520, 60-3,190, and 77-27,139.04 and insurance premium tax paid to municipalities;

(c) For counties, state aid to counties paid pursuant to sections 60-3,184 to 60-3,190, insurance premium tax paid to counties, and reimbursements to counties from funds appropriated pursuant to section 29-3933;

(d) For community colleges, (i) for fiscal years 2010-11, 2011-12, and 2012-13, state aid to community colleges paid pursuant to section 90-517 and (ii) for fiscal year 2013-14 and each fiscal year thereafter, state aid to community colleges paid pursuant to the Community College Aid Act;

(e) For educational service units, state aid appropriated under sections 79-1241.01 and 79-1241.03; and

(f) For local public health departments as defined in section 71-1626, state aid as distributed under section 71-1628.08.

**Source:** Laws 1996, LB 299, § 1; Laws 1997, LB 269, § 11; Laws 1998, LB 989, § 1; Laws 1998, LB 1104, § 4; Laws 1999, LB 36, § 2; Laws 1999, LB 86, § 7; Laws 1999, LB 881, § 6; Laws 2001, LB 335, § 1; Laws 2002, LB 259, § 6; Laws 2002, LB 876, § 3; Laws 2003, LB 540, § 1; Laws 2003, LB 563, § 16; Laws 2004, LB 1005, § 1; Laws 2005, LB 274, § 222; Laws 2007, LB342, § 30; Laws 2009, LB218, § 1; Laws 2009, LB549, § 1; Laws 2010, LB1048, § 1; Laws 2010, LB1072, § 1; Laws 2011, LB59, § 1;

Laws 2011, LB383, § 1; Laws 2012, LB946, § 8; Laws 2015, LB259, § 4; Laws 2015, LB424, § 1; Laws 2017, LB382, § 1.  
Operative date July 1, 2017.

## Cross References

Community College Aid Act, see section 85-2231.

**13-519 Governmental unit; adoption of budget; limitations; additional increases authorized; procedure.**

(1)(a) Subject to subdivisions (1)(b) and (c) of this section, for all fiscal years beginning on or after July 1, 1998, no governmental unit shall adopt a budget containing a total of budgeted restricted funds more than the last prior year's total of budgeted restricted funds plus allowable growth plus the basic allowable growth percentage of the base limitation established under section 77-3446. For the second fiscal year in which a county will receive a full year of receipts from the tax imposed in sections 77-27,223 to 77-27,227, the prior year's total of restricted funds shall be the prior year's total of restricted funds plus the total receipts from the tax imposed in sections 77-27,223 to 77-27,227 in the prior year. If a governmental unit transfers the financial responsibility of providing a service financed in whole or in part with restricted funds to another governmental unit or the state, the amount of restricted funds associated with providing the service shall be subtracted from the last prior year's total of budgeted restricted funds for the previous provider and may be added to the last prior year's total of restricted funds for the new provider. For governmental units that have consolidated, the calculations made under this section for consolidating units shall be made based on the combined total of restricted funds, population, or full-time equivalent students of each governmental unit.

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

(c) For fiscal year 2017-18, the last prior year's total of restricted funds for counties shall be the last prior year's total of restricted funds less the last prior year's restricted funds budgeted by counties under sections 39-2501 to 39-2520, plus the last prior year's amount of restricted funds budgeted by counties under sections 39-2501 to 39-2520 to be used for capital improvements.

(2) A governmental unit may exceed the limit provided in subdivision (1)(a) of this section for a fiscal year by up to an additional one percent upon the affirmative vote of at least seventy-five percent of the governing body.

(3) A governmental unit may exceed the applicable allowable growth percentage otherwise prescribed in this section by an amount approved by a majority of legal voters voting on the issue at a special election called for such purpose upon the recommendation of the governing body or upon the receipt by the county clerk or election commissioner of a petition requesting an election signed by at least five percent of the legal voters of the governmental unit. The recommendation of the governing body or the petition of the legal voters shall include the amount and percentage by which the governing body would increase its budgeted restricted funds for the ensuing year over and above the current year's budgeted restricted funds. The county clerk or election commissioner shall call for a special election on the issue within thirty days after the

receipt of such governing body recommendation or legal voter petition. The election shall be held pursuant to the Election Act, and all costs shall be paid by the governing body. The issue may be approved on the same question as a vote to exceed the levy limits provided in section 77-3444.

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

**Source:** Laws 1996, LB 299, § 2; Laws 1998, LB 989, § 2; Laws 2001, LB 329, § 9; Laws 2002, LB 259, § 7; Laws 2003, LB 9, § 1; Laws 2005, LB 38, § 1; Laws 2008, LB1154, § 2; Laws 2009, LB121, § 1; Laws 2009, LB501, § 1; Laws 2010, LB1072, § 2; Laws 2015, LB261, § 1; Laws 2017, LB382, § 2.

Operative date July 1, 2017.

Cross References

Election Act, see section 32-101.

**13-520 Limitations; not applicable to certain restricted funds.**

The limitations in section 13-519 shall not apply to (1) restricted funds budgeted for capital improvements, (2) restricted funds expended from a qualified sinking fund for acquisition or replacement of tangible personal property with a useful life of five years or more, (3) restricted funds pledged to retire bonded indebtedness, used by a public airport to retire interest-free loans from the Division of Aeronautics of the Department of Transportation in lieu of bonded indebtedness at a lower cost to the public airport, or used to pay other financial instruments that are approved and agreed to before July 1, 1999, in the same manner as bonds by a governing body created under section 35-501, (4) restricted funds budgeted in support of a service which is the subject of an agreement or a modification of an existing agreement whether operated by one of the parties to the agreement or by an independent joint entity or joint public agency, (5) restricted funds budgeted to pay for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency pursuant to the Emergency Management Act, (6) restricted funds budgeted to pay for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a governmental unit which require or obligate a governmental unit to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a governmental unit, or (7) the dollar amount by which restricted funds budgeted by a natural resources district to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and

Protection Act exceed its restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2003-04.

**Source:** Laws 1996, LB 299, § 3; Laws 1998, LB 989, § 3; Laws 1999, LB 86, § 8; Laws 1999, LB 87, § 54; Laws 1999, LB 141, § 1; Laws 2004, LB 962, § 4; Laws 2009, LB121, § 2; Laws 2015, LB261, § 2; Laws 2017, LB339, § 73.  
Operative date July 1, 2017.

**Cross References**

**Emergency Management Act**, see section 81-829.36.

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

**ARTICLE 9**

**POLITICAL SUBDIVISIONS TORT CLAIMS ACT**

**Section**

13-910. Act and sections; exemptions.

13-912. Defective bridge or highway; damages; liability; limitation.

**13-910 Act and sections; exemptions.**

The Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610 shall not apply to:

(1) Any claim based upon an act or omission of an employee of a political subdivision, exercising due care, in the execution of a statute, ordinance, or officially adopted resolution, rule, or regulation, whether or not such statute, ordinance, resolution, rule, or regulation is valid;

(2) Any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of the political subdivision or an employee of the political subdivision, whether or not the discretion is abused;

(3) Any claim based upon the failure to make an inspection or making an inadequate or negligent inspection of any property other than property owned by or leased to such political subdivision to determine whether the property complies with or violates any statute, ordinance, rule, or regulation or contains a hazard to public health or safety unless the political subdivision had reasonable notice of such hazard or the failure to inspect or inadequate or negligent inspection constitutes a reckless disregard for public health or safety;

(4) Any claim based upon the issuance, denial, suspension, or revocation of or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, or order. Nothing in this subdivision shall be construed to limit a political subdivision's liability for any claim based upon the negligent execution by an employee of the political subdivision in the issuance of a certificate of title under the Motor Vehicle Certificate of Title Act and the State Boat Act except when such title is issued upon an application filed electronically by an approved licensed dealer participating in the electronic dealer services system pursuant to section 60-1507;

(5) Any claim arising with respect to the assessment or collection of any tax or fee or the detention of any goods or merchandise by any law enforcement officer;

(6) Any claim caused by the imposition or establishment of a quarantine by the state or a political subdivision, whether such quarantine relates to persons or property;

(7) Any claim arising out of assault, battery, false arrest, false imprisonment, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

(8) Any claim by an employee of the political subdivision which is covered by the Nebraska Workers' Compensation Act;

(9) Any claim arising out of the malfunction, destruction, or unauthorized removal of any traffic or road sign, signal, or warning device unless it is not corrected by the political subdivision responsible within a reasonable time after actual or constructive notice of such malfunction, destruction, or removal. Nothing in this subdivision shall give rise to liability arising from an act or omission of any political subdivision in placing or removing any traffic or road signs, signals, or warning devices when such placement or removal is the result of a discretionary act of the political subdivision;

(10) Any claim arising out of snow or ice conditions or other temporary conditions caused by nature on any highway as defined in section 60-624, bridge, public thoroughfare, or other public place due to weather conditions. Nothing in this subdivision shall be construed to limit a political subdivision's liability for any claim arising out of the operation of a motor vehicle by an employee of the political subdivision while acting within the course and scope of his or her employment by the political subdivision;

(11) Any claim arising out of the plan or design for the construction of or an improvement to any highway as defined in such section or bridge, either in original construction or any improvement thereto, if the plan or design is approved in advance of the construction or improvement by the governing body of the political subdivision or some other body or employee exercising discretionary authority to give such approval;

(12) Any claim arising out of the alleged insufficiency or want of repair of any highway as defined in such section, bridge, or other public thoroughfare. Insufficiency or want of repair shall be construed to refer to the general or overall condition and shall not refer to a spot or localized defect. A political subdivision shall be deemed to waive its immunity for a claim due to a spot or localized defect only if (a) the political subdivision has had actual or constructive notice of the defect within a reasonable time to allow repair prior to the incident giving rise to the claim or (b) the claim arose during the time specified in a notice provided by the political subdivision pursuant to subsection (3) of section 39-1359 and the state or political subdivision had actual or constructive notice; or

(13)(a) Any claim relating to recreational activities for which no fee is charged (i) resulting from the inherent risk of the recreational activity, (ii) arising out of a spot or localized defect of the premises unless the spot or localized defect is not corrected by the political subdivision leasing, owning, or in control of the premises within a reasonable time after actual or constructive notice of the spot or localized defect, or (iii) arising out of the design of a skatepark or bicycle motocross park constructed for purposes of skateboarding, inline skating, bicycling, or scootering that was constructed or reconstructed, reasonably and in good faith, in accordance with generally recognized engineering or safety standards or design theories in existence at the time of the

construction or reconstruction. For purposes of this subdivision, a political subdivision shall be charged with constructive notice only when the failure to discover the spot or localized defect of the premises is the result of gross negligence.

(b) For purposes of this subdivision:

(i) Recreational activities include, but are not limited to, whether as a participant or spectator: Hunting, fishing, swimming, boating, camping, picnicking, hiking, walking, running, horseback riding, use of trails, nature study, waterskiing, winter sports, use of playground equipment, biking, roller blading, skateboarding, golfing, athletic contests; visiting, viewing, or enjoying entertainment events, festivals, or historical, archaeological, scenic, or scientific sites; and similar leisure activities;

(ii) Inherent risk of recreational activities means those risks that are characteristic of, intrinsic to, or an integral part of the activity;

(iii) Gross negligence means the absence of even slight care in the performance of a duty involving an unreasonable risk of harm; and

(iv) Fee means a fee to participate in or be a spectator at a recreational activity. A fee shall include payment by the claimant to any person or organization other than the political subdivision only to the extent the political subdivision retains control over the premises or the activity. A fee shall not include payment of a fee or charge for parking or vehicle entry.

(c) This subdivision, and not subdivision (3) of this section, shall apply to any claim arising from the inspection or failure to make an inspection or negligent inspection of premises owned or leased by the political subdivision and used for recreational activities.

**Source:** Laws 1969, c. 138, § 9, p. 629; Laws 1986, LB 811, § 10; R.S.Supp.,1986, § 23-2409; Laws 1992, LB 262, § 8; Laws 1993, LB 370, § 2; Laws 1996, LB 900, § 1025; Laws 1999, LB 228, § 1; Laws 2004, LB 560, § 1; Laws 2005, LB 276, § 98; Laws 2007, LB564, § 2; Laws 2011, LB589, § 2; Laws 2017, LB263, § 1.

Operative date August 24, 2017.

#### Cross References

**Motor Vehicle Certificate of Title Act**, see section 60-101.

**Nebraska Workers' Compensation Act**, see section 48-1,110.

**State Boat Act**, see section 37-1201.

### **13-912 Defective bridge or highway; damages; liability; limitation.**

If any person suffers personal injury or loss of life, or damage to his or her property by means of insufficiency or want of repair of a highway or bridge or other public thoroughfare, which a political subdivision is liable to keep in repair, the person sustaining the loss or damage, or his or her personal representative, may recover in an action against the political subdivision, and if damages accrue in consequence of the insufficiency or want of repair of a road or bridge or other public thoroughfare, erected and maintained by two or more political subdivisions, the action can be brought against all of the political subdivisions liable for the repairs of the same; and damages and costs shall be paid by the political subdivisions in proportion as they are liable for the repairs. The procedure for filing such claims and bringing suit shall be the same for claims under this section as for other claims under the Political Subdivisions

Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610. No political subdivision shall be liable for damages occasioned by defects in state highways and bridges thereon which the Department of Transportation is required to maintain, but the political subdivision shall not be relieved of liability until the state has actually undertaken construction or maintenance of such highways. It is the intent of the Legislature that minimum maintenance highways and roads shall not be deemed to be insufficient or in want of repair when they meet the minimum standards for such highways and roads pursuant to section 39-2109.

**Source:** Laws 1889, c. 7, § 4, p. 78; R.S.1913, § 2995; C.S.1922, § 2746; Laws 1929, c. 171, § 1, p. 585; C.S.1929, § 39-832; R.S.1943, § 39-834; Laws 1959, c. 167, § 2, p. 609; R.R.S.1943, § 39-834; Laws 1969, c. 138, § 10, p. 630; Laws 1983, LB 10, § 1; R.S. 1943, (1983), § 23-2410; Laws 1996, LB 900, § 1026; Laws 2017, LB339, § 74.

Operative date July 1, 2017.

## ARTICLE 12

### NEBRASKA PUBLIC TRANSPORTATION ACT

#### Section

13-1203. Terms, defined.

13-1210. Assistance program; department; certify funding; report.

13-1212. Department; rules and regulations; duties; public-purpose organization; denied financial assistance; petition; hearing.

#### **13-1203 Terms, defined.**

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

(1) Public transportation shall mean the transport of passengers on a regular and continuing basis by motor carrier for hire, whether over regular or irregular routes, over any public road in this state, including city bus systems, intercity bus systems, special public transportation systems to include portal-to-portal escorted service for the elderly or handicapped, taxi, subscription, dial-a-ride, or other demand-responsive systems, and those motor carriers for hire which may carry elderly or handicapped individuals for a set fare, a donation, or at no cost to such individuals. Public transportation shall not include motor carriers for hire when engaged in the transportation of school children and teachers to and from school and school-related activities and shall not include private car pools;

(2) Department shall mean the Department of Transportation;

(3) Director shall mean the Director-State Engineer;

(4) Elderly shall mean any person sixty-two years of age or older who is drawing social security and every person sixty-five years of age and older;

(5) Handicapped shall mean any individual who is unable without special facilities or special planning or design to utilize public transportation facilities and services;

(6) Municipality shall mean any village or incorporated city, except cities of the metropolitan class operating under home rule charter;



(7) Qualified public-purpose organization shall mean an incorporated private not-for-profit group or agency which:

(a) Has operated or proposes to operate only motor vehicles having a seating capacity of twenty or less for the transportation of passengers in the state;

(b) Has been approved as capable of providing public transportation services by the appropriate city or county governing body; and

(c) Operates or proposes to operate a public transportation service in an area which the department has identified as not being adequately served by existing public or private transportation services pursuant to section 13-1205; and

(8) Intercity bus system shall mean a system of regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more communities or areas not in close proximity which support public transportation service. At least one terminus of the intercity bus system shall be in an area that makes meaningful connections with intercity service to more distant points.

**Source:** Laws 1975, LB 443, § 7; Laws 1977, LB 374, § 1; Laws 1981, LB 144, § 2; R.S.1943, (1983), § 19-3903; Laws 1993, LB 158, § 2; Laws 2017, LB339, § 75.  
Operative date July 1, 2017.

**13-1210 Assistance program; department; certify funding; report.**

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

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

**Source:** Laws 1980, LB 722, § 12; Laws 1986, LB 599, § 3; R.S.Supp.,1986, § 19-3909.01; Laws 2004, LB 1144, § 1; Laws 2008, LB1068, § 1; Laws 2012, LB782, § 17; Laws 2016, LB977, § 2; Laws 2017, LB339, § 76.  
Operative date July 1, 2017.

**13-1212 Department; rules and regulations; duties; public-purpose organization; denied financial assistance; petition; hearing.**

(1) The department shall administer sections 13-1209 to 13-1212, and shall adopt and promulgate such rules and regulations pursuant to the Administrative Procedure Act as are necessary, including but not limited to defining eligible capital acquisition and operating costs, establishing contractual and other requirements including standardized accounting and reporting requirements, which shall include the applicant's proposed service area, the type of service proposed, all routes and schedules, and any further information needed

for recipients to ensure the maximum feasible coordination and use of state funds, establishing application procedures, and developing a policy for apportioning funds made available for this program should they be insufficient to cover all eligible projects. Priority on the allocation of all funds shall be given to those proposed projects best suited to serve the needs of the elderly and handicapped and to proposed projects with federal funding participation.

(2) Any public-purpose organization proposing to provide public transportation denied financial assistance as a result of a determination by the department that an area is adequately served by existing transportation services may submit a petition to the department requesting the department to reclassify the proposed service area as not being adequately served by existing public transportation services. The petition submitted to the department by the public-purpose organization shall bear the signatures of at least fifty registered voters residing in the proposed service area. Upon receipt of the petition the department shall hold a public hearing in the proposed service area and after such hearing shall determine whether the proposed service area is already adequately served. In carrying out its duties under this section the department shall comply with the provisions of the Administrative Procedure Act. The department shall not be required to conduct a reevaluation hearing for an area more frequently than once a year.

**Source:** Laws 1975, LB 443, § 15; Laws 1981, LB 144, § 7; R.S.1943, (1983), § 19-3911; Laws 2016, LB977, § 3; Laws 2017, LB339, § 77.

Operative date July 1, 2017.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**ARTICLE 27**

**CIVIC AND COMMUNITY CENTER FINANCING ACT**

Section  
13-2705. Conditional grant approval; limits.

**13-2705 Conditional grant approval; limits.**

The department may conditionally approve grants of assistance from the fund to eligible and competitive applicants within the following limits:

(1) Except as provided in subdivision (2) of this section, a grant request shall be in an amount meeting the following requirements:

(a) For a grant of assistance under section 13-2704.01, at least ten thousand dollars but no more than:

(i) For a city of the primary class, one million five hundred thousand dollars;

(ii) For a city with a population of more than forty thousand but less than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, seven hundred fifty thousand dollars;

(iii) For a city with a population of more than twenty thousand but less than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, five hundred thousand dollars;

(iv) For a city with a population of more than ten thousand but less than twenty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, four hundred thousand dollars; and

(v) For a municipality with a population of less than ten thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, two hundred fifty thousand dollars; and

(b) For a grant of assistance under section 13-2704.02, at least two thousand dollars but no more than ten thousand dollars;

(2) Upon the balance of the fund reaching two million five hundred thousand dollars, and until the balance of the fund falls below one million dollars, a grant request shall be in an amount meeting the following requirements:

(a) For a grant of assistance under section 13-2704.01, at least ten thousand dollars but no more than:

(i) For a city of the primary class, two million two hundred fifty thousand dollars;

(ii) For a city with a population of more than forty thousand but less than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, one million one hundred twenty-five thousand dollars;

(iii) For a city with a population of more than twenty thousand but less than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, seven hundred fifty thousand dollars;

(iv) For a city with a population of more than ten thousand but less than twenty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, six hundred thousand dollars; and

(v) For a municipality with a population of less than ten thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, three hundred seventy-five thousand dollars; and

(b) For a grant of assistance under section 13-2704.02, at least two thousand dollars but no more than ten thousand dollars;

(3) Assistance from the fund shall not amount to more than fifty percent of the cost of the project for which a grant is requested; and

(4) A municipality shall not be awarded more than one grant of assistance under section 13-2704.01 and one grant of assistance under section 13-2704.02 in any five-year period.

**Source:** Laws 1999, LB 382, § 17; Laws 2003, LB 385, § 1; Laws 2010, LB789, § 1; Laws 2011, LB297, § 6; Laws 2013, LB153, § 7; Laws 2017, LB113, § 3.  
Effective date August 24, 2017.

## ARTICLE 32

## PROPERTY ASSESSED CLEAN ENERGY ACT

## Section

- 13-3201. Act, how cited.
- 13-3202. Legislative findings.
- 13-3203. Terms, defined.
- 13-3204. Clean energy assessment district; creation; procedures; governing body; public hearing; notice; ordinance; resolution; contents; assessment contracts.
- 13-3205. Assessment contract; contents; recorded with register of deeds; municipality; duties; annual assessments; copy to county assessor and register of deeds.
- 13-3206. Annual assessment; PACE lien; notice of lien; contents; priority; sale of property; use of proceeds; release of lien; recording.
- 13-3207. Municipality; raise capital; sources; bonds; issuance; statutory lien; vote; when required.
- 13-3208. Loss reserve fund; created; funding; use.
- 13-3209. Debt service reserve fund.
- 13-3210. Use of Interlocal Cooperation Act; public hearing; contract authorized.
- 13-3211. Report; contents.

**13-3201 Act, how cited.**

Sections 13-3201 to 13-3211 shall be known and may be cited as the Property Assessed Clean Energy Act.

**Source:** Laws 2016, LB1012, § 1; R.S.Supp.,2016, § 18-3201; Laws 2017, LB625, § 1.  
Effective date April 28, 2017.

**13-3202 Legislative findings.**

The Legislature finds that:

(1) Energy efficiency and the use of renewable energy are important for preserving the health and economic well-being of Nebraska's citizens. Using less energy decreases the cost of living and keeps the cost of public power low by delaying the need for additional power plants. By building the market for energy efficiency and renewable energy products, new jobs will be created for Nebraskans in the energy efficiency and renewable energy job sectors;

(2) To further these goals, the state should promote energy efficiency improvements and renewable energy systems;

(3) The upfront costs for energy efficiency improvements and renewable energy systems prohibit many property owners from making improvements. Therefore, it is necessary to authorize municipalities to implement an alternative financing method through the creation of clean energy assessment districts; and

(4) A public purpose will be served by providing municipalities with the authority to finance the installation of energy efficiency improvements and renewable energy systems through the creation of clean energy assessment districts.

**Source:** Laws 2016, LB1012, § 2; R.S.Supp.,2016, § 18-3202; Laws 2017, LB625, § 2.  
Effective date April 28, 2017.

**13-3203 Terms, defined.**

For purposes of the Property Assessed Clean Energy Act:

(1) Assessment contract means a contract entered into between a municipality, a property owner, and, if applicable, a third-party lender under which the municipality agrees to provide financing for an energy project in exchange for a property owner's agreement to pay an annual assessment for a period not to exceed the weighted average useful life of the energy project;

(2) Clean energy assessment district means a district created by a municipality to provide financing for energy projects;

(3) Energy efficiency improvement means any acquisition, installation, or modification benefiting publicly or privately owned property that is designed to reduce the electric, gas, water, or other utility demand or consumption of the buildings on or to be constructed on such property or to promote the efficient and effective management of natural resources or storm water, including, but not limited to:

(a) Insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems;

(b) Storm windows and doors; multiglazed windows and doors; heat-absorbing or heat-reflective glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

(c) Automated energy control systems;

(d) Heating, ventilating, or air conditioning and distribution system modifications or replacements;

(e) Caulking, weatherstripping, and air sealing;

(f) Replacement or modification of lighting fixtures to reduce the energy use of the lighting system;

(g) Energy recovery systems;

(h) Daylighting systems;

(i) Installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity;

(j) Facilities providing for water conservation or pollutant control;

(k) Roofs designed to reduce energy consumption or support additional loads necessitated by other energy efficiency improvements;

(l) Installation of energy-efficient fixtures, including, but not limited to, water heating systems, escalators, and elevators;

(m) Energy efficiency related items so long as the cost of the energy efficiency related items financed by the municipality does not exceed twenty-five percent of the total cost of the energy project; and

(n) Any other installation or modification of equipment, devices, or materials approved as a utility cost-saving measure by the municipality;

(4) Energy efficiency related item means any repair, replacement, improvement, or modification to real property that is necessary or desirable in conjunction with an energy efficiency improvement, including, but not limited to, structural support improvements and the repair or replacement of any building components, paved surfaces, or fixtures disrupted or altered by the installation of an energy efficiency improvement;

(5) Energy project means the installation or modification of an energy efficiency improvement or the acquisition, installation, or improvement of a renewable energy system;

(6) Municipality means any county, city, or village in this state;

(7) Qualifying property means any of the following types of property located within a municipality:

(a) Agricultural property;

(b) Commercial property, including multifamily residential property comprised of more than four dwelling units;

(c) Industrial property; or

(d) Single-family residential property, which may include up to four dwelling units;

(8)(a) Renewable energy resource means a resource that naturally replenishes over time and that minimizes the output of toxic material in the conversion to energy. Renewable energy resource includes, but is not limited to, the following:

(i) Nonhazardous biomass;

(ii) Solar and solar thermal energy;

(iii) Wind energy;

(iv) Geothermal energy;

(v) Methane gas captured from a landfill or elsewhere;

(vi) Photovoltaic systems; and

(vii) Cogeneration and trigeneration systems; and

(b) Renewable energy resource does not include petroleum, nuclear power, natural gas, coal, or hazardous biomass; and

(9) Renewable energy system means a fixture, product, device, or interacting group of fixtures, products, or devices on the customer's side of the meter that uses one or more renewable energy resources to generate electricity. Renewable energy system includes a biomass stove but does not include an incinerator.

**Source:** Laws 2016, LB1012, § 3; R.S.Supp.,2016, § 18-3203; Laws 2017, LB625, § 3.

Effective date April 28, 2017.

**13-3204 Clean energy assessment district; creation; procedures; governing body; public hearing; notice; ordinance; resolution; contents; assessment contracts.**

(1) Pursuant to the procedures provided in this section, a municipality may, from time to time, create one or more clean energy assessment districts. Such districts may be separate, overlapping, or coterminous and may be created anywhere within the municipality or its extraterritorial zoning jurisdiction, except that a county shall not create a district that includes any area within the corporate boundaries or extraterritorial zoning jurisdiction of any city or village located in whole or in part within such county. The governing body of the municipality shall be the governing body for any district so created.

(2) Prior to creating any clean energy assessment district, the municipality shall hold a public hearing at which the public may comment on the creation of such district. Notice of the public hearing shall be given by publication in a

legal newspaper in or of general circulation in the municipality at least ten days prior to the hearing.

(3) After the public hearing, the municipality may create a clean energy assessment district by ordinance or, for counties, by resolution. The ordinance or resolution shall include:

- (a) A finding that the financing of energy projects is a valid public purpose;
- (b) A contract form to be used for assessment contracts between the municipality, the owner of the qualifying property, and, if applicable, a third-party lender governing the terms and conditions of financing and annual assessments;
- (c) Identification of an official authorized to enter into assessment contracts on behalf of the municipality;
- (d) An application process and eligibility requirements for financing energy projects;
- (e) An explanation of how annual assessments will be made and collected;
- (f) For energy projects involving residential property, a requirement that any interest rate on assessment installments must be a fixed rate;
- (g) For energy projects involving residential property, a requirement that the repayment period for assessments must be according to a fixed repayment schedule;
- (h) Information regarding the following, to the extent known, or procedures to determine the following in the future:
  - (i) Provisions for an adequate debt service reserve fund created under section 13-3209, if applicable;
  - (ii) Provisions for an adequate loss reserve fund created under section 13-3208; and
  - (iii) Any application, administration, or other program fees to be charged to owners participating in the program that will be used to finance costs incurred by the municipality as a result of the program;
- (i) A requirement that the term of the annual assessments not exceed the weighted average useful life of the energy project paid for by the annual assessments;
- (j) A requirement that any energy efficiency improvement that is not permanently affixed to the qualifying property upon which an annual assessment is imposed to repay the cost of such energy efficiency improvement must be conveyed with the qualifying property if a transfer of ownership of the qualifying property occurs;
- (k) A requirement that, prior to the effective date of any contract that binds the purchaser to purchase qualifying property upon which an annual assessment is imposed, the owner shall provide notice to the purchaser that the purchaser assumes responsibility for payment of the annual assessment as provided in subdivision (3)(d) of section 13-3205;
- (l) Provisions for marketing and participant education;
- (m) A requirement that after the energy project is completed, the municipality shall obtain verification that the renewable energy system or energy efficiency improvement was properly installed and is operating as intended; and

(n) A requirement that the clean energy assessment district, with respect to single-family residential property, comply with the Property Assessed Clean Energy Act and with directives or guidelines issued by the Federal Housing Administration and the Federal Housing Finance Agency on or after January 1, 2016, relating to property assessed clean energy financing.

**Source:** Laws 2016, LB1012, § 4; R.S.Supp.,2016, § 18-3204; Laws 2017, LB625, § 4.  
Effective date April 28, 2017.

**13-3205 Assessment contract; contents; recorded with register of deeds; municipality; duties; annual assessments; copy to county assessor and register of deeds.**

(1) After passage of an ordinance or resolution under section 13-3204, a municipality may enter into an assessment contract with the record owner of qualifying property within a clean energy assessment district and, if applicable, with a third-party lender to finance an energy project on the qualifying property. The costs financed under the assessment contract may include the cost of materials and labor necessary for installation, permit fees, inspection fees, application and administrative fees, bank fees, and all other fees that may be incurred by the owner pursuant to the installation. The assessment contract shall provide for the repayment of all such costs through annual assessments upon the qualifying property benefited by the energy project. A municipality may not impose an annual assessment under the Property Assessed Clean Energy Act unless such annual assessment is part of an assessment contract entered into under this section.

(2) Before entering into an assessment contract with an owner and, if applicable, a third-party lender under this section, the municipality shall verify:

(a) In all cases involving qualifying property other than single-family residential property, that the owner has obtained an acknowledged and verified written consent and subordination agreement executed by each mortgage holder or trust deed beneficiary stating that the mortgagee or beneficiary consents to the imposition of the annual assessment and that the priority of the mortgage or trust deed is subordinated to the PACE lien established in section 13-3206. The consent and subordination agreement shall be in a form and substance acceptable to each mortgagee or beneficiary and shall be recorded in the office of the register of deeds of the county in which the qualifying property is located;

(b) That there are no delinquent taxes, special assessments, water or sewer charges, or any other assessments levied on the qualifying property; that there are no involuntary liens, including, but not limited to, construction liens, on the qualifying property; and that the owner of the qualifying property is current on all debt secured by a mortgage or trust deed encumbering or otherwise securing the qualifying property;

(c) That there are no delinquent annual assessments on the qualifying property which were imposed to pay for a different energy project under the Property Assessed Clean Energy Act; and

(d) That there are sufficient resources to complete the energy project and that the estimated economic benefit, including, but not limited to, energy cost savings, maintenance cost savings, and other property operating savings expect-



ed from the energy project during the financing period, is equal to or greater than the principal cost of the energy project.

(3) Upon completion of the verifications required under subsection (2) of this section, an assessment contract may be executed by the municipality, the owner of the qualifying property, and, if applicable, a third-party lender and shall provide:

(a) A description of the energy project, including the estimated cost of the energy project and a description of the estimated savings prepared in accordance with standards acceptable to the municipality;

(b) A mechanism for:

(i) Verifying the final costs of the energy project upon its completion; and

(ii) Ensuring that any amounts advanced, financed, or otherwise paid by the municipality toward the costs of the energy project will not exceed the final cost of the energy project;

(c) An agreement by the property owner to pay annual assessments for a period not to exceed the weighted average useful life of the energy project;

(d) A statement that the obligations set forth in the assessment contract, including the obligation to pay annual assessments, are a covenant that shall run with the land and be obligations upon future owners of the qualifying property; and

(e) An acknowledgment that no subdivision of qualifying property subject to the assessment contract shall be valid unless the assessment contract or an amendment to such contract divides the total annual assessment due between the newly subdivided parcels pro rata to the special benefit realized by each subdivided parcel.

(4) The total annual assessments levied against qualifying property under an assessment contract shall not exceed the sum of the cost of the energy project, including any energy audits or inspections or portion thereof financed by the municipality, plus such administration fees, interest, and other financing costs reasonably required by the municipality.

(5) Nothing in the Property Assessed Clean Energy Act shall be construed to prevent a municipality from entering into more than one assessment contract with respect to a single parcel of real property so long as each assessment contract relates to a separate energy project and subdivision (2)(c) of this section is not violated.

(6) The municipality shall provide a copy of each signed assessment contract to the county assessor and register of deeds of the county in which the qualifying property is located, and the register of deeds shall record the assessment contract with the qualifying property.

(7) Annual assessments agreed to under an assessment contract shall be levied against the qualifying property and collected at the same time and in the same manner as property taxes are levied and collected, except that an assessment contract for qualifying property other than single-family residential property may allow third-party lenders to collect annual assessments directly from the owner of the qualifying property in a manner prescribed in the assessment contract. Any third-party lender collecting annual assessments directly from the owner of the qualifying property shall notify the municipality within three business days if an annual assessment becomes delinquent.

(8) Collection of annual assessments shall only be sought from the original owners or subsequent purchasers of qualifying property subject to an assessment contract.

**Source:** Laws 2016, LB1012, § 5; R.S.Supp.,2016, § 18-3205; Laws 2017, LB625, § 5.  
Effective date April 28, 2017.

**13-3206 Annual assessment; PACE lien; notice of lien; contents; priority; sale of property; use of proceeds; release of lien; recording.**

(1)(a) For qualifying property other than single-family residential property, any annual assessment imposed on such qualifying property that becomes delinquent, including any interest on the annual assessment and any penalty, shall constitute a PACE lien against the qualifying property on which the annual assessment is imposed until the annual assessment, including any interest and penalty, is paid in full. Any annual assessment that is not paid within the time period set forth in the assessment contract shall be considered delinquent. The municipality shall, within fourteen days after an annual assessment becomes delinquent, record a notice of such lien in the office of the register of deeds of the county in which the qualifying property is located.

(b) For qualifying property that is single-family residential property, all annual assessments imposed on such qualifying property, including any interest on the annual assessments and any penalty, shall, upon the initial annual assessment, constitute a PACE lien against the qualifying property on which the annual assessments are imposed until all annual assessments, including any interest and penalty, are paid in full. Any annual assessment that is not paid within the time period set forth in the assessment contract shall be considered delinquent. The municipality shall, upon imposition of the initial annual assessment, record a notice of such lien in the office of the register of deeds of the county in which the qualifying property is located.

(2) A notice of lien filed under this section shall, at a minimum, include:

(a) The amount of funds disbursed or to be disbursed pursuant to the assessment contract;

(b) The names and addresses of the current owners of the qualifying property subject to the annual assessment;

(c) The legal description of the qualifying property subject to the annual assessment;

(d) The duration of the assessment contract; and

(e) The name and address of the municipality filing the notice of lien.

(3) The PACE lien created under this section shall:

(a) For qualifying property that is single-family residential property, (i) be subordinate to all liens on the qualifying property recorded prior to the time the notice of the PACE lien is recorded, (ii) be subordinate to a first mortgage or trust deed on the qualifying property recorded after the notice of the PACE lien is recorded, and (iii) have priority over any other lien on the qualifying property recorded after the notice of the PACE lien is recorded; and

(b) For qualifying property other than single-family residential property and subject to the requirement in subdivision (2)(a) of section 13-3205 to obtain and

record an executed consent and subordination agreement, have the same priority and status as real property tax liens.

(4)(a) Notwithstanding any other provision of law, in the event of a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed relating to qualifying property that is single-family residential property, the holders of any mortgages, trust deeds, or other liens, including delinquent annual assessments secured by PACE liens, shall receive proceeds in accordance with the priorities established under subdivision (3)(a) of this section. In the event there are insufficient proceeds from such a sale, from the loss reserve fund established pursuant to section 13-3208, or from any other means to satisfy the delinquent annual assessments, such delinquent annual assessments shall be extinguished. Any annual assessment that has not yet become delinquent shall not be accelerated or extinguished in the event of a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed relating to qualifying property that is single-family residential property. Upon the transfer of ownership of qualifying property that is single-family residential property, including a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed, the nondelinquent annual assessments shall continue as a lien on the qualifying property, subject to the priorities established under subdivision (3)(a) of this section.

(b) Upon the transfer of ownership of qualifying property other than single-family residential property, including a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed, the obligation to pay annual assessments shall run with the qualifying property.

(5)(a) For qualifying property other than single-family residential property, when the delinquent annual assessment, including any interest and penalty, is paid in full, a release of the PACE lien shall be recorded in the office of the register of deeds of the county in which the notice of the PACE lien was recorded.

(b) For qualifying property that is single-family residential property, when all annual assessments, including any interest and penalty, are paid in full, a release of the PACE lien shall be recorded in the office of the register of deeds of the county in which the notice of the PACE lien was recorded.

(6) If the holder or loan servicer of any existing mortgage or trust deed that encumbers or that is otherwise secured by the qualifying property has established a payment schedule or escrow account to accrue property taxes or insurance, such holder or loan servicer may increase the required monthly payment, if any, by an amount necessary to pay the annual assessment imposed under the Property Assessed Clean Energy Act.

**Source:** Laws 2016, LB1012, § 6; R.S.Supp.,2016, § 18-3206; Laws 2017, LB625, § 6.  
Effective date April 28, 2017.

**13-3207 Municipality; raise capital; sources; bonds; issuance; statutory lien; vote; when required.**

(1) A municipality may raise capital to finance energy projects undertaken pursuant to an assessment contract entered into under the Property Assessed Clean Energy Act. Such capital may come from any of the following:

- (a) The sale of bonds;
- (b) Amounts to be advanced by the municipality through funds available to it from any other source; or
- (c) Third-party lending.

(2) Bonds issued under subsection (1) of this section shall not be general obligations of the municipality, shall be nonrecourse, and shall not be backed by the full faith and credit of the issuer, the municipality, or the state, but shall only be secured by payments of annual assessments by owners of qualifying property within the clean energy assessment district or districts specified who are subject to an assessment contract under section 13-3205.

(3) Any single bond issuance by a municipality for purposes of the Property Assessed Clean Energy Act shall not exceed five million dollars without a vote of the registered voters of such municipality.

(4) A pledge of annual assessments, funds, or contractual rights made in connection with the issuance of bonds by a municipality constitutes a statutory lien on the annual assessments, funds, or contractual rights so pledged in favor of the person or persons to whom the pledge is given without further action by the municipality. The statutory lien is valid and binding against all other persons, with or without notice.

(5) Bonds of one series issued under the Property Assessed Clean Energy Act may be secured on a parity with bonds of another series issued by the municipality pursuant to the terms of a master indenture or master resolution entered into or adopted by the municipality.

(6) Bonds issued under the act, and interest payable on such bonds, are exempt from all taxation by this state and its political subdivisions.

(7) Bonds issued under the act further essential public and governmental purposes, including, but not limited to, reduced energy costs, reduced greenhouse gas emissions, economic stimulation and development, improved property valuation, and increased employment.

(8) The Property Assessed Clean Energy Act shall not be used to finance an energy project on qualifying property owned by a municipality or any other political subdivision of the State of Nebraska without having first been approved by a vote of the registered voters of such municipality or political subdivision owning the qualifying property. Such vote shall be taken at a special election called for such purpose or at an election held in conjunction with a statewide or local primary or general election.

**Source:** Laws 2016, LB1012, § 7; R.S.Supp.,2016, § 18-3207; Laws 2017, LB625, § 7.

Effective date April 28, 2017.

**13-3208 Loss reserve fund; created; funding; use.**

(1) A municipality that has created a clean energy assessment district shall create a loss reserve fund for:

- (a) The payment of any delinquent annual assessments for qualifying property that is single-family residential property in the event that there is a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed of such qualifying property and the proceeds resulting from such a sale are, after all superior liens have been satisfied, insufficient to pay

the delinquent annual assessments. Payments from the loss reserve fund under this subdivision may only be made with respect to delinquent annual assessments imposed upon qualifying property that is single-family residential property, with no more than one such payment to be made for the same qualifying property; and

(b) The payment of annual assessments imposed upon qualifying property that is single-family residential property subsequent to a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed in which the mortgagee or beneficiary becomes the owner of such qualifying property. Payments from the loss reserve fund under this subdivision may only be made with respect to annual assessments imposed upon qualifying property that is single-family residential property subsequent to the date on which the mortgagee or beneficiary became the owner of such qualifying property and until the qualifying property is conveyed by the mortgagee or beneficiary, with no more than one such payment to be made for the same qualifying property.

(2) The loss reserve fund may be funded by state and federal sources, the proceeds of bonds issued pursuant to the Property Assessed Clean Energy Act, third-party capital, and participating property owners. The loss reserve fund shall only be used to provide payment of annual assessments as provided in this section and for the costs of administering the loss reserve fund.

(3) The loss reserve fund shall not be funded by, and payment of annual assessments and costs of administering the loss reserve fund shall not be made from, the general fund of any municipality.

**Source:** Laws 2016, LB1012, § 8; R.S.Supp.,2016, § 18-3208; Laws 2017, LB625, § 8.  
Effective date April 28, 2017.

### **13-3209 Debt service reserve fund.**

A municipality that has created a clean energy assessment district may create a debt service reserve fund to be used as security for capital raised under section 13-3207.

**Source:** Laws 2016, LB1012, § 9; R.S.Supp.,2016, § 18-3209; Laws 2017, LB625, § 9.  
Effective date April 28, 2017.

### **13-3210 Use of Interlocal Cooperation Act; public hearing; contract authorized.**

(1) Two or more municipalities may enter into an agreement pursuant to the Interlocal Cooperation Act for the creation, administration, or creation and administration of clean energy assessment districts.

(2) If the creation of clean energy assessment districts is implemented jointly by two or more municipalities, a single public hearing held jointly by the cooperating municipalities is sufficient to satisfy the requirements of section 13-3204.

(3) A municipality or municipalities may contract with a third party for the administration of clean energy assessment districts.

**Source:** Laws 2016, LB1012, § 10; R.S.Supp.,2016, § 18-3210; Laws 2017, LB625, § 10.  
Effective date April 28, 2017.

## Cross References

Interlocal Cooperation Act, see section 13-801.

**13-3211 Report; contents.**

(1) Any municipality that creates a clean energy assessment district under the Property Assessed Clean Energy Act shall, on or before January 31 of each year, electronically submit a report to the Urban Affairs Committee of the Legislature on the following:

(a) The number of clean energy assessment districts in the municipality and their location;

(b) The total dollar amount of energy projects undertaken pursuant to the act;

(c) The total dollar amount of outstanding bonds issued under the act;

(d) The total dollar amount of annual assessments collected as of the end of the most recently completed calendar year and the total amount of annual assessments yet to be collected pursuant to assessment contracts signed under the act; and

(e) A description of the types of energy projects undertaken pursuant to the act.

(2) If a clean energy assessment district is administered jointly by two or more municipalities, a single report submission by the cooperating municipalities is sufficient to satisfy the requirements of subsection (1) of this section.

**Source:** Laws 2016, LB1012, § 11; R.S.Supp.,2016, § 18-3211; Laws 2017, LB625, § 11.

Effective date April 28, 2017.

## CHAPTER 14

### CITIES OF THE METROPOLITAN CLASS

#### Article.

1. General Powers. 14-101 to 14-117.
5. Fiscal Management, Revenue, and Finances.
  - (c) Street Improvement; Bonds; Grading; Assessments. 14-537.
  - (g) Pension Board. 14-567.
18. Metropolitan Transit Authority. 14-1805.01.
21. Public Utilities. 14-2111, 14-2113.

#### ARTICLE 1

#### GENERAL POWERS

#### Section

- 14-101. Cities of the metropolitan class, defined; population required; general powers.
- 14-101.01. Declaration as city of the metropolitan class; when.
- 14-117. Corporate limits; how fixed; annexation of cities or villages; limitation; powers and duties of city council.

#### **14-101 Cities of the metropolitan class, defined; population required; general powers.**

All cities in this state which have attained a population of three hundred thousand inhabitants or more as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall be cities of the metropolitan class and governed by this act. Whenever the words this act occur in sections 14-101 to 14-138, 14-201 to 14-229, 14-360 to 14-376, 14-501 to 14-556, 14-601 to 14-609, 14-702 to 14-704, and 14-804 to 14-816, they shall be construed as referring exclusively to those sections. The population of a city of the metropolitan class shall consist of the people residing within the territorial boundaries of such city and the residents of any territory duly and properly annexed to such city. Each city of the metropolitan class shall be a body corporate and politic and shall have power (1) to sue and be sued, (2) to purchase, lease, lease with option to buy, acquire by gift or devise, and hold real and personal property within or without the limits of the city for the use of the city, and real estate sold for taxes, (3) to sell, exchange, lease, and convey any real or personal estate owned by the city, in such manner and upon such terms as may be to the best interests of the city, except that real estate acquired for state armory sites shall be conveyed strictly in the manner provided in sections 18-1001 to 18-1006, (4) to make all contracts and do all other acts in relation to the property and concerns of the city necessary to the exercise of its corporate or administrative powers, and (5) to exercise such other and further powers as may be conferred by law. The powers hereby granted shall be exercised by the mayor and city council of such city except when otherwise specially provided.

**Source:** Laws 1921, c. 116, art. I, § 1, p. 398; C.S.1922, § 3488; C.S.1929, § 14-101; Laws 1935, Spec. Sess., c. 10, § 2, p. 72; Laws 1941, c. 130, § 8, p. 494; C.S.Supp.,1941, § 14-101; R.S.1943, § 14-101;

Laws 1947, c. 50, § 1, p. 170; Laws 1961, c. 58, § 1, p. 215; Laws 1963, c. 43, § 1, p. 218; Laws 1965, c. 85, § 1, p. 327; Laws 1967, c. 40, § 1, p. 170; Laws 1993, LB 726, § 3; Laws 2017, LB113, § 4.

Effective date August 24, 2017.

**14-101.01 Declaration as city of the metropolitan class; when.**

Whenever any city of the primary class shall attain a population of three hundred thousand inhabitants or more as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the mayor of such city shall certify such fact to the Secretary of State, who upon the filing of such certificate shall by proclamation declare such city to be of the metropolitan class.

**Source:** Laws 2017, LB113, § 5.

Effective date August 24, 2017.

**14-117 Corporate limits; how fixed; annexation of cities or villages; limitation; powers and duties of city council.**

The corporate limits of any city of the metropolitan class shall be fixed and determined by ordinance by the city council. The city council of any city of the metropolitan class may at any time extend the corporate limits of such city over any contiguous or adjacent lands, lots, tracts, streets, or highways, such distance as may be deemed proper in any direction, and may include, annex, merge, or consolidate with such city of the metropolitan class, by such extension of its limits, any adjoining city of the first class having a population of less than ten thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census or any adjoining city of the second class or village. Any other laws and limitations defining the boundaries of cities or villages or the increase of area or extension of limits thereof shall not apply to lots, lands, cities, or villages annexed, consolidated, or merged under this section.

**Source:** Laws 1921, c. 116, art. I, § 16, p. 412; C.S.1922, § 3504; C.S. 1929, § 14-117; R.S.1943, § 14-117; Laws 1998, LB 611, § 1; Laws 2017, LB113, § 6.

Effective date August 24, 2017.

**ARTICLE 5**

**FISCAL MANAGEMENT, REVENUE, AND FINANCES**

(c) STREET IMPROVEMENT; BONDS; GRADING; ASSESSMENTS

Section

14-537. Special assessments; when payable; rate of interest; collection and enforcement.

(g) PENSION BOARD

14-567. Pension board; duties; retirement plan reports.

(c) STREET IMPROVEMENT; BONDS; GRADING; ASSESSMENTS

**14-537 Special assessments; when payable; rate of interest; collection and enforcement.**

Special assessments for improving the streets, alleys, sewers, and sidewalks within any improvement district in a city of the metropolitan class, except



where otherwise provided, shall be made in accordance with this section. The total cost of improvements shall be levied at one time upon the property and become delinquent as provided in this section. The city may require that the total amount of such assessment be paid in less than ten years if, in each year of the payment schedule, the maximum amount payable, excluding interest, is five hundred dollars. If the total amount is more than five thousand dollars, then the city shall establish a payment schedule of at least ten years but not longer than twenty years with the total amount payable in equal yearly installments, except that the minimum amount payable shall not be less than five hundred dollars per year, excluding interest. The first installment shall be due and delinquent fifty days from the date of levy, the second, one year from date of levy, and a like installment shall be due and delinquent annually thereafter until all such installments are paid. Each of the installments except the first shall draw interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of levy until the installment becomes delinquent and, after the installment becomes delinquent, shall draw interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, payable in advance, as in other cases of special assessments. Such special assessments shall also be collected and enforced as in other cases of special assessments.

**Source:** Laws 1921, c. 116, art. IV, § 25, p. 482; C.S.1922, § 3651; C.S.1929, § 14-528; Laws 1933, c. 136, § 12, p. 523; C.S.Supp.,1941, § 14-528; R.S.1943, § 14-537; Laws 1959, c. 38, § 1, p. 214; Laws 1963, c. 48, § 1, p. 224; Laws 1980, LB 933, § 4; Laws 1981, LB 167, § 5; Laws 1991, LB 745, § 5; Laws 2015, LB361, § 10; Laws 2017, LB159, § 1.  
Effective date May 11, 2017.

(g) PENSION BOARD

**14-567 Pension board; duties; retirement plan reports.**

(1) Beginning December 31, 1998, through December 31, 2017, the pension board of a city of the metropolitan class shall file with the Public Employees Retirement Board an annual report on each retirement plan established by such city pursuant to section 401(a) of the Internal Revenue Code and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (a) The number of persons participating in the retirement plan;
- (b) The contribution rates of participants in the plan;
- (c) Plan assets and liabilities;
- (d) The names and positions of persons administering the plan;
- (e) The names and positions of persons investing plan assets;
- (f) The form and nature of investments;
- (g) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(h) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the pension board may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(2) Through December 31, 2017, if such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the pension board of a city of the metropolitan class shall cause to be prepared an annual report and shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the pension board does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the city. All costs of the audit shall be paid by the city. The report shall consist of a full actuarial analysis of each such retirement plan established by the city. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

(3)(a) Beginning December 31, 2018, and each December 31 thereafter, for a defined benefit plan the pension board or its designee shall prepare and electronically file an annual report with the Auditor of Public Accounts and the Nebraska Retirement Systems Committee of the Legislature. If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, the report shall be in addition to the reports required by section 13-2402. The report shall be on a form prescribed by the Auditor of Public Accounts and shall include, but not be limited to, the following information:

(i) The levels of benefits of participants in the plan, the number of members who are eligible for a benefit, the total present value of such members' benefits, and the funding sources which will pay for such benefits; and

(ii) A copy of a full actuarial analysis of each such defined benefit plan. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization which offers investment advice or provides investment management services to the retirement plan.

(b) The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the pension board does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may

audit, or cause to be audited, the pension board. All costs of the audit shall be paid by the pension board.

**Source:** Laws 1998, LB 1191, § 5; Laws 1999, LB 795, § 3; Laws 2011, LB474, § 3; Laws 2014, LB759, § 4; Laws 2017, LB415, § 3.  
Effective date May 24, 2017.

## ARTICLE 18

### METROPOLITAN TRANSIT AUTHORITY

#### Section

14-1805.01. Metropolitan transit authority; retirement plan reports; duties.

#### **14-1805.01 Metropolitan transit authority; retirement plan reports; duties.**

(1) Beginning December 31, 1998, through December 31, 2017, the chairperson of the board shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to section 14-1805 and section 401(a) of the Internal Revenue Code and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (a) The number of persons participating in the retirement plan;
- (b) The contribution rates of participants in the plan;
- (c) Plan assets and liabilities;
- (d) The names and positions of persons administering the plan;
- (e) The names and positions of persons investing plan assets;
- (f) The form and nature of investments;
- (g) For each defined contribution plan, a full description of investment policies and options available to plan participants; and
- (h) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(2) Through December 31, 2017, if such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the authority shall cause to be prepared an annual report and the chairperson shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the authority does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the authority. All costs of the audit shall be paid by the

authority. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to section 14-1805. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

(3)(a) Beginning December 31, 2018, and each December 31 thereafter, for a defined benefit plan the chairperson or his or her designee shall prepare and electronically file an annual report with the Auditor of Public Accounts and the Nebraska Retirement Systems Committee of the Legislature. If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, the report shall be in addition to the reports required by section 13-2402. The report shall be on a form prescribed by the Auditor of Public Accounts and shall include, but not be limited to, the following information:

(i) The levels of benefits of participants in the plan, the number of members who are eligible for a benefit, the total present value of such members' benefits, and the funding sources which will pay for such benefits; and

(ii) A copy of a full actuarial analysis of each such defined benefit plan. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization which offers investment advice or provides investment management services to the retirement plan.

(b) The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the authority does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the authority. All costs of the audit shall be paid by the authority.

**Source:** Laws 1998, LB 1191, § 8; Laws 1999, LB 795, § 4; Laws 2011, LB474, § 4; Laws 2014, LB759, § 5; Laws 2017, LB415, § 4.  
Effective date May 24, 2017.

## ARTICLE 21 PUBLIC UTILITIES

### Section

- 14-2111. Utilities district; employees; retirement and other benefits; terms and conditions; reports.  
14-2113. Board of directors; natural gas and water supply; powers; jurisdiction; relocation of facilities.

### **14-2111 Utilities district; employees; retirement and other benefits; terms and conditions; reports.**

(1) The board of directors of any metropolitan utilities district may also provide benefits for, insurance of, and annuities for the present and future employees and appointees of the district covering accident, disease, death, total

and permanent disability, and retirement, all or any of them, under such terms and conditions as the board may deem proper and expedient from time to time. Any retirement plan adopted by the board of directors shall be upon some contributory basis requiring contributions by both the district and the employee or appointee, except that the district may pay the entire cost of the fund necessary to cover service rendered prior to the adoption of any new retirement plan. Any retirement plan shall take into consideration the benefits provided for employees and appointees of metropolitan utilities districts under the Social Security Act, and any benefits provided under a contributory retirement plan shall be supplemental to the benefits provided under the Social Security Act as defined in section 68-602 if the employees entitled to vote in a referendum vote in favor of old age and survivors' insurance coverage. To effectuate any plan adopted pursuant to this authority, the board of directors of the district is empowered to establish and maintain reserves and funds, provide for insurance premiums and costs, and make such delegation as may be necessary to carry into execution the general powers granted by this section. Payments made to employees and appointees, under the authority in this section, shall be exempt from attachment or other legal process and shall not be assignable.

(2) Any retirement plan adopted by the board of directors of any metropolitan utilities district may allow the district to pick up the employee contribution required by this section for all compensation paid on or after January 1, 1986, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the employer shall continue to withhold federal income taxes based upon such contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the Internal Revenue Code, such contributions shall not be included as gross income of the employee until such time as they are distributed or made available. The employer shall pay the employee contributions from the same source of funds which is used in paying earnings to the employees. The employer shall pick up the contributions by a salary deduction either through a reduction in the cash salary of the employee or a combination of a reduction in salary and offset against a future salary increase. Employee contributions picked up shall be treated in the same manner and to the same extent as employee contributions made prior to the date picked up.

(3) Beginning December 31, 1998, through December 31, 2017:

(a) The chairperson of the board shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;

(vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits; and

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the board of directors of any metropolitan utilities district shall cause to be prepared an annual report and shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the board of directors does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the metropolitan utilities district. All costs of the audit shall be paid by the metropolitan utilities district. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

(4)(a) Beginning December 31, 2018, and each December 31 thereafter, for a defined benefit plan the chairperson of the board or his or her designee shall prepare and electronically file an annual report with the Auditor of Public Accounts and the Nebraska Retirement Systems Committee of the Legislature. If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, the report shall be in addition to the reports required by section 13-2402. The report shall be on a form prescribed by the Auditor of Public Accounts and shall include, but not be limited to, the following information:

(i) The levels of benefits of participants in the plan, the number of members who are eligible for a benefit, the total present value of such members' benefits, and the funding sources which will pay for such benefits; and

(ii) A copy of a full actuarial analysis of each such defined benefit plan. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization which offers investment advice or provides investment management services to the retirement plan.

(b) The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the board of directors does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the district. All costs of the audit shall be paid by the district.

**Source:** 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(2), p. 181; R.S.1943, § 14-1022; Laws 1951, c. 31, § 1, p. 129; Laws 1955, c. 25, § 1, p. 118; Laws 1985, LB 353, § 1; R.S.1943, (1991), § 14-1022; Laws 1992, LB 746, § 11; Laws 1995, LB 574, § 16; Laws 1998, LB 1191, § 16; Laws 1999, LB 795, § 5; Laws 2011, LB474, § 5; Laws 2012, LB916, § 1; Laws 2014, LB759, § 6; Laws 2015, LB40, § 1; Laws 2017, LB415, § 5.  
Effective date May 24, 2017.

**14-2113 Board of directors; natural gas and water supply; powers; jurisdiction; relocation of facilities.**

The board of directors of the metropolitan utilities district shall have general charge, supervision, and control of all matters pertaining to the natural gas supply and the water supply of the district for domestic, mechanical, public, and fire purposes. This shall include the general charge, supervision, and control of the design, construction, operation, maintenance, and extension or improvement of the necessary plant to supply natural gas, to develop power, and to pump water. It shall have the authority to enter upon and utilize streets, alleys, and public grounds therefor upon due notice to the proper authorities controlling same, subject to the provisions of sections 39-1361 and 39-1362, except that while any permit hereafter granted by the Department of Transportation under such provisions shall not be construed to be a contract as referred to within the provisions of section 39-1304.02, such parties may separately contract in relation to relocation of facilities and reimbursement therefor. The board shall also have the power to appropriate private property required by the district for natural gas and water service, to purchase and contract for necessary materials, labor, and supplies, and to supply water and natural gas without the district upon such terms and conditions as it may deem proper. The authority and power conferred in this section upon the board of directors shall extend as far beyond the corporate limits of the metropolitan utilities district as the board may deem necessary.

**Source:** Laws 1913, c. 143, § 7, p. 352; R.S.1913, § 4249; C.S.1922, § 3752; C.S.1929, § 14-1008; R.S.1943, § 14-1008; Laws 1957, c. 20, § 2, p. 153; Laws 1959, c. 35, § 3, p. 193; R.S.1943, (1991), § 14-1008; Laws 1992, LB 746, § 13; Laws 2017, LB339, § 78.  
Operative date July 1, 2017.





## CHAPTER 15

### CITIES OF THE PRIMARY CLASS

Article.

1. Incorporation, Extensions, Additions, Wards, Consolidation. 15-101, 15-102.
10. Pensions. 15-1017.

#### ARTICLE 1

#### INCORPORATION, EXTENSIONS, ADDITIONS, WARDS, CONSOLIDATION

Section

- 15-101. Cities of the primary class, defined; population required.
- 15-102. Declaration as city of the primary class; when.

#### **15-101 Cities of the primary class, defined; population required.**

All cities having more than one hundred thousand and less than three hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall be known as cities of the primary class. The population of a city of the primary class shall consist of the people residing within the territorial boundaries of such city and the residents of any territory duly and properly annexed to such city.

**Source:** Laws 1901, c. 16, § 1, p. 71; R.S.1913, § 4404; C.S.1922, § 3780; C.S.1929, § 15-101; R.S.1943, § 15-101; Laws 1947, c. 50, § 2, p. 171; Laws 1961, c. 58, § 2, p. 216; Laws 1965, c. 85, § 2, p. 328; Laws 1993, LB 726, § 4; Laws 2017, LB113, § 7.  
Effective date August 24, 2017.

#### **15-102 Declaration as city of the primary class; when.**

Whenever any city of the first class shall attain a population of more than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the mayor of such city shall certify such fact to the Secretary of State, who upon the filing of such certificate shall by proclamation declare such city to be of the primary class.

**Source:** Laws 1901, c. 16, § 2, p. 71; R.S.1913, § 4405; C.S.1922, § 3781; C.S.1929, § 15-102; R.S.1943, § 15-102; Laws 1967, c. 53, § 1, p. 189; Laws 2017, LB113, § 8.  
Effective date August 24, 2017.

#### ARTICLE 10

#### PENSIONS

Section

- 15-1017. Pension funds; investment; reports.

#### **15-1017 Pension funds; investment; reports.**

(1) A city of the primary class which has a city pension and retirement plan or fund, or a city fire and police pension plan or fund, or both, may provide by ordinance as authorized by its home rule charter, and not prohibited by the Constitution of Nebraska, for the investment of any plan or fund, and it may provide that (a) such a city shall place in trust any part of such plan or fund, (b) it shall place in trust any part of any such plan or fund with a corporate trustee in Nebraska, or (c) it shall purchase any part of any such plan from a life insurance company licensed to do business in the State of Nebraska. The powers conferred by this section shall be independent of and in addition and supplemental to any other provisions of the laws of the State of Nebraska with reference to the matters covered hereby and this section shall be considered as a complete and independent act and not as amendatory of or limited by any other provision of the laws of the State of Nebraska.

(2) Beginning December 31, 1998, through December 31, 2017:

(a) The clerk of a city of the primary class shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to this section, section 15-1026, and section 401(a) of the Internal Revenue Code and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and
- (viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the city clerk may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits; and

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the city council of a city of the primary class shall cause to be prepared an annual report and shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the city council does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the city. All costs of the audit shall be paid by the city. The

report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section and section 15-1026. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

(3)(a) Beginning December 31, 2018, and each December 31 thereafter, for a defined benefit plan, the clerk of a city of the primary class or his or her designee shall prepare and electronically file an annual report with the Auditor of Public Accounts and the Nebraska Retirement Systems Committee of the Legislature. If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, the report shall be in addition to the reports required by section 13-2402. The report shall be on a form prescribed by the Auditor of Public Accounts and shall include, but not be limited to, the following information:

(i) The levels of benefits of participants in the plan, the number of members who are eligible for a benefit, the total present value of such members' benefits, and the funding sources which will pay for such benefits; and

(ii) A copy of a full actuarial analysis of each such defined benefit plan. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization which offers investment advice or provides investment management services to the retirement plan.

(b) The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the city council does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the city. All costs of the audit shall be paid by the city.

**Source:** Laws 1967, c. 52, § 1, p. 188; Laws 1998, LB 1191, § 17; Laws 1999, LB 795, § 6; Laws 2011, LB474, § 6; Laws 2014, LB759, § 7; Laws 2017, LB415, § 6.  
Effective date May 24, 2017.



## CHAPTER 16

### CITIES OF THE FIRST CLASS

#### Article.

1. Incorporation, Extensions, Additions, Wards. 16-101, 16-130.
2. General Powers. 16-222.02.
6. Public Improvements.
  - (b) Streets. 16-622, 16-623.
9. Suburban Development. 16-901, 16-902.
10. Retirement Systems.
  - (a) Police Officers Retirement Act. 16-1017.
  - (b) Firefighters Retirement. 16-1037.

#### ARTICLE 1

#### INCORPORATION, EXTENSIONS, ADDITIONS, WARDS

#### Section

- 16-101. Cities of the first class, defined; population required.
- 16-130. Annexation by city within county between 100,000 and 250,000 inhabitants; mayor and city council; powers; notice; contents; liability; limitation on action.

#### **16-101 Cities of the first class, defined; population required.**

All cities having more than five thousand and not more than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall be known as cities of the first class. The population of a city of the first class shall consist of the people residing within the territorial boundaries of such city and the residents of any territory duly and properly annexed to such city.

**Source:** Laws 1901, c. 18, § 1, p. 226; R.S.1913, § 4804; C.S.1922, § 3972; C.S.1929, § 16-101; R.S.1943, § 16-101; Laws 1965, c. 85, § 3, p. 328; Laws 1993, LB 726, § 5; Laws 2017, LB113, § 9.

Effective date August 24, 2017.

#### **16-130 Annexation by city within county between 100,000 and 250,000 inhabitants; mayor and city council; powers; notice; contents; liability; limitation on action.**

(1) The provisions of this section shall govern annexation by a city of the first class located in whole or in part within the boundaries of a county having a population in excess of one hundred thousand inhabitants but less than two hundred fifty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

(2) Except as provided in sections 13-1111 to 13-1120 and subject to this section, the mayor and city council of a city of the first class described in subsection (1) of this section may by ordinance at any time include within the corporate limits of such city any contiguous or adjacent lands, lots, tracts,

streets, or highways as are urban or suburban in character and in such direction as may be deemed proper. Such grant of power shall not be construed as conferring power upon the mayor and city council to extend the limits of such a city over any agricultural lands which are rural in character.

(3) The invalidity of the annexation of any tract of land in one ordinance shall not affect the validity of the remaining tracts of land which are annexed by the ordinance and which otherwise conform to state law.

(4) Any owner of property contiguous or adjacent to such a city may by petition request that such property be included within the corporate limits of such city.

(5) Notwithstanding the requirements of this section, the mayor and city council are not required to approve any petition requesting annexation or any resolution or ordinance proposing to annex land pursuant to this section.

(6) Not later than fourteen days prior to the public hearing before the planning commission on a proposed annexation by the city, the city clerk shall send notice of the proposed annexation by certified mail, return receipt requested, to any of the following entities serving customers in such city or in the area proposed for annexation: Any natural gas public utility as defined in section 66-1802; any natural gas utility owned or operated by the city; any metropolitan utilities district; any public power district; any public power and irrigation district; any municipality; any electric cooperative; and any other governmental entity providing electric service. Such notice shall include a copy of the proposed annexation ordinance, the date, time, and place of the public hearing before the planning commission on the proposed annexation ordinance, and a map showing the boundaries of the area proposed for annexation.

(7) Prior to the final adoption of the annexation ordinance, the minutes of the city council meeting at which such final adoption was considered shall reflect formal compliance with the provisions of subsection (6) of this section.

(8) No additional or further notice beyond that required by subsection (6) of this section shall be necessary in the event (a) that the scheduled city council public hearing on the proposed annexation is adjourned, continued, or postponed until a later date or (b) that subsequent to providing such notice the ordinance regarding such proposed annexation was amended, changed, or rejected by action of the city council prior to formal passage of the annexation ordinance.

(9) Except for a willful or deliberate failure to cause notice to be given, no annexation decision made by a city either to accept or reject a proposed annexation, either in whole or in part, shall be void, invalidated, or affected in any way because of any irregularity, defect, error, or failure on the part of the city or its employees to cause notice to be given as required by this section if a reasonable attempt to comply with this section was made.

(10) Except for a willful or deliberate failure to cause notice to be given, the city and its employees shall not be liable for any damage to any person resulting from any failure to cause notice to be given as required by this section when a reasonable attempt was made to provide such notice. No action for damages resulting from the failure to cause notice to be provided as required by this section shall be filed more than one year following the date of the formal acceptance or rejection of the proposed annexation, either in whole or in part, by the city council.

(11) No action to challenge the validity of the acceptance or rejection of a proposed annexation on the basis of this section shall be filed more than one year following the date of the formal acceptance or rejection of the annexation by the city council.

**Source:** Laws 2009, LB495, § 4; Laws 2017, LB74, § 1.  
Effective date August 24, 2017.

## ARTICLE 2 GENERAL POWERS

Section  
16-222.02. Employment of full-time fire chief; appointment; duties.

### **16-222.02 Employment of full-time fire chief; appointment; duties.**

Each city of the first class with a population in excess of forty-one thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall employ a full-time fire chief with appropriate training, credentials, and experience and for whom firefighting or emergency medical first response is a full-time career. The fire chief shall be appointed under the Civil Service Act by the mayor with the approval of the city council or by the city manager in cities that have adopted the city manager plan of government. The fire chief shall have the immediate superintendence of the fire prevention, fire suppression, and emergency medical first response services and the facilities and equipment related to such services of the city. The fire chief shall promulgate, implement, and enforce rules governing the actions and conduct of volunteer members of the department so as to be in conformity with the personnel policies of the city.

**Source:** Laws 2008, LB1096, § 2; Laws 2015, LB455, § 1; Laws 2016, LB857, § 1; Laws 2017, LB113, § 10.  
Effective date August 24, 2017.

#### Cross References

**Civil Service Act**, see section 19-1825.

## ARTICLE 6 PUBLIC IMPROVEMENTS

### (b) STREETS

Section  
16-622. Improvement districts; assessments; how levied; when delinquent; interest; collection; procedure.  
16-623. Improvement districts; bonds; interest.

### (b) STREETS

#### **16-622 Improvement districts; assessments; how levied; when delinquent; interest; collection; procedure.**

The cost of making improvements of the streets and alleys within any improvement district created pursuant to section 16-619 or 16-624 shall be assessed upon the lots and lands in such districts specially benefited thereby in proportion to such benefits. The amounts thereof shall, except as provided in sections 19-2428 to 19-2431, be determined by the mayor and city council

under section 16-615. The assessment of the special tax for the cost of such improvements, except as provided in this section, shall be levied at one time and shall become delinquent in equal annual installments over such period of years, not to exceed twenty, as the mayor and city council may determine at the time of making the levy, the first such installment to become delinquent in fifty days after the date of such levy. Each installment, including those for graveling and the construction and replacement of pedestrian walks, plazas, malls, landscaping, lighting systems, and permanent facilities used in connection therewith as provided in this section, except the first, shall draw interest at a rate established by the mayor and city council not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of levy until the levy becomes delinquent. After the levy becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon. Should there be three or more installments delinquent and unpaid on the same property the mayor and city council may by resolution declare all future installments on such delinquent property to be due on a future fixed date. The resolution shall set forth the description of the property and the names of its record title owners and shall provide that all future installments shall become delinquent upon the date fixed. A copy of such resolution shall be published one time each week for not less than twenty days in a legal newspaper in or of general circulation in the city and after the fixed date such future installments shall be deemed to be delinquent and the city may proceed to enforce and collect the total amount due and all future installments. For assessments for graveling alone and without guttering or curbing, one-third of the total amount assessed against each lot or parcel of land shall become delinquent in fifty days after the date of the levy of the same, one-third in one year, and one-third in two years.

**Source:** Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4917; C.S.1922, § 4085; Laws 1925, c. 50, § 2, p. 193; C.S.1929, § 16-614; Laws 1933, c. 136, § 18, p. 527; C.S.Supp.,1941, § 16-614; R.S.1943, § 16-622; Laws 1953, c. 28, § 1, p. 115; Laws 1955, c. 32, § 1, p. 139; Laws 1959, c. 64, § 1, p. 285; Laws 1959, c. 47, § 1, p. 233; Laws 1967, c. 67, § 5, p. 220; Laws 1972, LB 1213, § 1; Laws 1973, LB 541, § 1; Laws 1980, LB 933, § 10; Laws 1981, LB 167, § 11; Laws 1983, LB 94, § 1; Laws 2016, LB704, § 89; Laws 2017, LB132, § 1.

Effective date August 24, 2017.

### **16-623 Improvement districts; bonds; interest.**

For the purpose of paying the cost of improving the streets, avenues, or alleys in an improvement district created pursuant to section 16-619 or 16-624, exclusive of intersections of streets or avenues, or spaces opposite alleys therein, the mayor and city council shall have power and may, by ordinance, cause to be issued bonds of the city, to be called Street Improvement Bonds of District No. . . . ., payable in not exceeding twenty years from date, and bearing interest, payable either annually or semiannually, with interest coupons attached. In such cases they shall also provide that the special taxes and assessments shall constitute a sinking fund for the payment of the bonds. The entire cost of improving any such street, avenue, or alley, properly chargeable



to any lot or land within any such improvement district according to the front footage thereof, may be paid by the owners of such lots or lands within fifty days from the levying of such special taxes, and thereupon such lot or lands shall be exempt from any lien or charge therefor.

**Source:** Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4918; C.S.1922, § 4086; Laws 1925, c. 50, § 3, p. 194; C.S.1929, § 16-615; Laws 1931, c. 32, § 1, p. 123; C.S.Supp.,1941, § 16-615; R.S.1943, § 16-623; Laws 1967, c. 67, § 6, p. 221; Laws 1969, c. 51, § 27, p. 288; Laws 2016, LB704, § 90; Laws 2017, LB132, § 2.  
Effective date August 24, 2017.

## ARTICLE 9

### SUBURBAN DEVELOPMENT

#### Section

- 16-901. Zoning regulations; building ordinances; public utility codes; extension; notice to county board.
- 16-902. Designation of jurisdiction; subdivision; platting; consent required; review by county planning commission; when required.

#### **16-901 Zoning regulations; building ordinances; public utility codes; extension; notice to county board.**

(1) Except as provided in section 13-327 and subsection (2) of this section, the extraterritorial zoning jurisdiction of a city of the first class shall consist of the unincorporated area two miles beyond and adjacent to its corporate boundaries.

(2) For purposes of sections 70-1001 to 70-1020, the extraterritorial zoning jurisdiction of a city of the first class shall consist of the unincorporated area one mile beyond and adjacent to its corporate boundaries.

(3) Any city of the first class may apply by ordinance any existing or future zoning regulations, property use regulations, building ordinances, electrical ordinances, plumbing ordinances, and ordinances authorized by section 16-240 within its extraterritorial zoning jurisdiction with the same force and effect as if such area were within the corporate limits of the city, except that no such ordinance shall be extended or applied so as to prohibit, prevent, or interfere with the conduct of existing farming, livestock operations, businesses, or industry. The fact that the extraterritorial zoning jurisdiction is located in a different county or counties than some or all portions of the municipality shall not be construed as affecting the powers of the city to apply such ordinances.

(4)(a) A city of the first class shall provide written notice to the county board of the county in which the city's extraterritorial zoning jurisdiction is located when proposing to adopt or amend a zoning ordinance which affects the city's extraterritorial zoning jurisdiction within such county. The written notice of the proposed change to the zoning ordinance shall be sent to the county board or its designee at least thirty days prior to the final decision by the city. The county board may submit comments or recommendations regarding the change in the zoning ordinance at the public hearings on the proposed change or directly to the city within thirty days after receiving such notice. The city may make its final decision (i) upon the expiration of the thirty days following the notice or

(ii) when the county board submits comments or recommendations, if any, to the city prior to the expiration of the thirty days following the notice.

(b) Subdivision (4)(a) of this section does not apply to a city of the first class (i) located in a county with a population in excess of one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census or (ii) if the city and the county have a joint planning commission or joint planning department.

**Source:** Laws 1957, c. 28, § 1, p. 183; Laws 1967, c. 70, § 1, p. 232; Laws 1967, c. 75, § 1, p. 242; Laws 1988, LB 934, § 5; Laws 2002, LB 729, § 3; Laws 2016, LB295, § 1; Laws 2016, LB704, § 203; Laws 2017, LB113, § 11; Laws 2017, LB132, § 3.  
Effective date August 24, 2017.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB113, section 11, with LB132, section 3, to reflect all amendments.

**16-902 Designation of jurisdiction; subdivision; platting; consent required; review by county planning commission; when required.**

(1) Except as provided in subsection (4) of this section, a city of the first class may designate by ordinance the portion of the territory located within its extraterritorial zoning jurisdiction and outside of any other organized city or village within which the designating city will exercise the powers and duties granted by sections 16-902 to 16-904 or section 19-2402.

(2) No owner of any real property located within the area designated by a city pursuant to subsection (1) or (4) of this section may subdivide, plat, or lay out such real property in building lots, streets, or other portions of the same intended to be dedicated for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto without first having obtained the approval of the city council of such city or its agent designated pursuant to section 19-916 and, when applicable, having complied with sections 39-1311 to 39-1311.05. The fact that such real property is located in a different county or counties than some or all portions of the city shall not be construed as affecting the necessity of obtaining the approval of the city council of such city or its designated agent.

(3) In counties that (a) have adopted a comprehensive development plan which meets the requirements of section 23-114.02 and (b) are enforcing subdivision regulations, the county planning commission shall be provided with all available materials on any proposed subdivision plat, contemplating public streets or improvements, which is filed with a city of the first class in that county, when such proposed plat lies partially or totally within the portion of that city's extraterritorial zoning jurisdiction where the powers and duties granted by sections 16-902 to 16-904 are being exercised by that city in such county. The commission shall be given four weeks to officially comment on the appropriateness of the design and improvements proposed in the plat. The review period for the commission shall run concurrently with subdivision review activities of the city after the commission receives all available material for a proposed subdivision plat.

(4) If a city of the first class receives approval for the cession and transfer of additional extraterritorial zoning jurisdiction under section 13-327, such city may designate by ordinance the portion of the territory located within its

extraterritorial zoning jurisdiction and outside of any other organized city or village within which the designating city will exercise the powers and duties granted by sections 16-902 to 16-904 or section 19-2402 and shall include territory ceded under section 13-327 within such designation.

**Source:** Laws 1957, c. 28, § 2(1), p. 183; Laws 1967, c. 70, § 2, p. 232; Laws 1967, c. 75, § 2, p. 243; Laws 1978, LB 186, § 1; Laws 1983, LB 71, § 2; Laws 1993, LB 208, § 1; Laws 2001, LB 222, § 1; Laws 2002, LB 729, § 4; Laws 2003, LB 187, § 4; Laws 2016, LB704, § 204; Laws 2016, LB864, § 2; Laws 2017, LB132, § 4.

Effective date August 24, 2017.

## ARTICLE 10 RETIREMENT SYSTEMS

### (a) POLICE OFFICERS RETIREMENT ACT

Section

16-1017. Retirement committee; duties.

### (b) FIREFIGHTERS RETIREMENT

16-1037. Retirement committee; officers; duties.

### (a) POLICE OFFICERS RETIREMENT ACT

#### **16-1017 Retirement committee; duties.**

(1) It shall be the duty of the retirement committee to:

(a) Provide each employee a summary of plan eligibility requirements and benefit provisions;

(b) Provide, within thirty days after a request is made by a participant, a statement describing the amount of benefits such participant is eligible to receive; and

(c) Make available for review an annual report of the retirement system's operations describing both (i) the amount of contributions to the retirement system from both employee and employer sources and (ii) an identification of the total assets of the retirement system.

(2) Beginning December 31, 1998, through December 31, 2017:

(a) The chairperson of the retirement committee shall file with the Public Employees Retirement Board a report on each retirement plan established pursuant to section 401(a) of the Internal Revenue Code and administered by a retirement system established pursuant to the Police Officers Retirement Act and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;

(vi) The form and nature of investments;

(vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits and the sources and amount of funding for such benefits; and

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the retirement committee shall cause to be prepared an annual report and the chairperson shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the retirement committee does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the city. All costs of the audit shall be paid by the city. The report shall consist of a full actuarial analysis of each such retirement plan administered by a retirement system established pursuant to the act. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

(3)(a) Beginning December 31, 2018, and each December 31 thereafter, for a defined benefit plan the chairperson of the retirement committee or his or her designee shall prepare and electronically file an annual report with the Auditor of Public Accounts and the Nebraska Retirement Systems Committee of the Legislature. If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, the report shall be in addition to the reports required by section 13-2402. The report shall be on a form prescribed by the Auditor of Public Accounts and shall include, but not be limited to, the following information:

(i) The levels of benefits of participants in the plan, the number of members who are eligible for a benefit, the total present value of such members' benefits, and the funding sources which will pay for such benefits; and

(ii) A copy of a full actuarial analysis of each such defined benefit plan. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization which offers investment advice or provides investment management services to the retirement plan.

(b) The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the retirement committee does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the retirement committee. All costs of the audit shall be paid by the retirement committee.

**Source:** Laws 1983, LB 237, § 17; Laws 1998, LB 1191, § 18; Laws 1999, LB 795, § 7; Laws 2011, LB474, § 7; Laws 2012, LB1082, § 14; Laws 2014, LB759, § 10; Laws 2017, LB415, § 7.  
Effective date May 24, 2017.

(b) FIREFIGHTERS RETIREMENT

**16-1037 Retirement committee; officers; duties.**

(1) It shall be the duty of the retirement committee to:

- (a) Elect a chairperson, a vice-chairperson, and such other officers as the committee deems appropriate;
- (b) Hold regular quarterly meetings and special meetings upon the call of the chairperson;
- (c) Conduct meetings pursuant to the Open Meetings Act;
- (d) Provide each employee a summary of plan eligibility requirements, benefit provisions, and investment options available to such employee;
- (e) Provide, within thirty days after a request is made by a participant, a statement describing the amount of benefits such participant is eligible to receive; and
- (f) Make available for review an annual report of the system's operations describing both (i) the amount of contributions to the system from both employee and employer sources and (ii) an identification of the total assets of the retirement system.

(2) Beginning December 31, 1998, through December 31, 2017:

- (a) The chairperson of the retirement committee shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to section 401(a) of the Internal Revenue Code and administered by a retirement system established pursuant to sections 16-1020 to 16-1042 and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:
  - (i) The number of persons participating in the retirement plan;
  - (ii) The contribution rates of participants in the plan;
  - (iii) Plan assets and liabilities;
  - (iv) The names and positions of persons administering the plan;
  - (v) The names and positions of persons investing plan assets;
  - (vi) The form and nature of investments;
  - (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits; and

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the retirement committee shall cause to be prepared an annual report and the chairperson shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the retirement committee does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the city. All costs of the audit shall be paid by the city. The report shall consist of a full actuarial analysis of each such retirement plan administered by a system established pursuant to sections 16-1020 to 16-1042. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

(3)(a) Beginning December 31, 2018, and each December 31 thereafter, for a defined benefit plan the chairperson of the retirement committee or his or her designee shall prepare and electronically file an annual report with the Auditor of Public Accounts and the Nebraska Retirement Systems Committee of the Legislature. If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, the report shall be in addition to the reports required by section 13-2402. The report shall be on a form prescribed by the Auditor of Public Accounts and shall include, but not be limited to, the following information:

(i) The levels of benefits of participants in the plan, the number of members who are eligible for a benefit, the total present value of such members' benefits, and the funding sources which will pay for such benefits; and

(ii) A copy of a full actuarial analysis of each such defined benefit plan. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization which offers investment advice or provides investment management services to the retirement plan.

(b) The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the retirement committee does not submit a copy of the report to the Auditor of Public

Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the retirement committee. All costs of the audit shall be paid by the retirement committee.

**Source:** Laws 1983, LB 531, § 18; Laws 1992, LB 672, § 28; Laws 1998, LB 1191, § 20; Laws 1999, LB 795, § 8; Laws 2004, LB 821, § 8; Laws 2011, LB474, § 8; Laws 2014, LB759, § 13; Laws 2017, LB415, § 8.  
Effective date May 24, 2017.

**Cross References**

**Open Meetings Act**, see section 84-1407.





**CITIES OF THE SECOND CLASS AND VILLAGES**

**CHAPTER 17**  
**CITIES OF THE SECOND CLASS AND VILLAGES**

Article.

1. Laws Applicable Only to Cities of the Second Class. 17-101 to 17-174.
2. Laws Applicable Only to Villages. 17-201 to 17-231.
3. Changes in Population or Class.
  - (a) Cities of the First Class. 17-301 to 17-304.
  - (b) Cities of the Second Class. 17-306.01 to 17-310.
  - (c) Villages. 17-311 to 17-313.
4. Change of Boundary; Additions.
  - (a) Consolidation. 17-401 to 17-404.
  - (b) Annexation of Territory. 17-405 to 17-412.
  - (c) Detachment of Territory Within City Limits. 17-414.
  - (d) Platting. 17-415 to 17-426. Transferred.
5. General Grant of Power. 17-501 to 17-575.
6. Elections, Officers, Ordinances.
  - (a) Elections. 17-601.01 to 17-603.
  - (b) Officers. 17-604 to 17-612.
  - (c) Ordinances. 17-613 to 17-616.
7. Fiscal Management. 17-701 to 17-720.
8. Board of Public Works in Cities of the Second Class. 17-801 to 17-810.
9. Particular Municipal Enterprises.
  - (a) Public Utilities Service. 17-903 to 17-912.
  - (b) Sewerage System. 17-913 to 17-925.04.
  - (c) Cemeteries. 17-926 to 17-947.
  - (d) Recreation Centers. 17-948 to 17-952.
  - (e) Public Buildings. 17-953 to 17-955.
  - (f) Refrigeration. 17-957 to 17-960.
  - (g) Medical and Housing Facilities. 17-962 to 17-966.
  - (h) Libraries. 17-967 to 17-969.
  - (i) Water Service District. 17-970 to 17-976.
10. Suburban Development. 17-1001 to 17-1003.

**ARTICLE 1**

**LAWS APPLICABLE ONLY TO CITIES OF THE SECOND CLASS**

Section

- |            |  |
|------------|--|
| 17-101.    | City of the second class, defined; population; exception.  |
| 17-104.    | City council members; election; term; qualifications.  |
| 17-105.    | City council; meetings; quorum.  |
| 17-106.    | City council; special meetings.  |
| 17-107.    | Mayor; qualifications; election; officers; appointment; removal; terms of office; police officers; appointment; removal, demotion, or suspension; procedure. |
| 17-108.    | Officers and employees; salaries.  |
| 17-108.02. | Officers and employees; merger of offices or employment; salaries.   |
| 17-110.    | Mayor; general duties and powers.  |
| 17-111.    | Mayor; ordinances; veto power; passage over veto.  |
| 17-112.    | Mayor; recommendations to city council.  |
| 17-113.    | Mayor; reports of officers; power to require.  |
| 17-114.    | Mayor; territorial jurisdiction.   |
| 17-117.    | Mayor; remission of fines; pardons; powers.  |
| 17-118.    | Police; arrest; power.   |
| 17-119.    | City overseer of streets; duties.  |

## CITIES OF THE SECOND CLASS AND VILLAGES

Section	
17-120.	Public morals; powers; restrictions.
17-121.	Health and sanitation; rules and regulations; board of health; members; powers.
17-122.	Hospital; establishment and control.
17-123.	Public health; regulations; water; power to supply.
17-123.01.	Transferred to section 17-573.
17-124.	Police; power to establish.
17-126.	Public market; establishment; regulation.
17-127.	Public buildings; power to erect.
17-128.	Repealed. Laws 2017, LB133, § 331.
17-129.	Disorderly conduct; power to prevent.
17-130.	Fire escapes; exits; regulation.
17-131.	Safety regulations.
17-132.	Places of amusement; safety regulations; revocation of license.
17-133.	Repealed. Laws 2017, LB133, § 331.
17-134.	Peddlers; pawnbrokers; entertainers; licensing and regulation.
17-135.	Repealed. Laws 2017, LB133, § 331.
17-136.	Fire hazards; dangerous buildings; elimination.
17-137.	Explosives; storage; fireworks; regulation.
17-138.	Animals; cruelty, prevention of.
17-139.	Traffic; sales; regulation.
17-140.	Signs and handbills; regulation.
17-141.	Sidewalks and substructures; regulation.
17-142.	Streets; moving of buildings; other obstructions; regulation.
17-143.	Railroads; location, grade, and crossing; regulation.
17-144.	Repealed. Laws 2017, LB133, § 331.
17-145.	Sewers and drains; regulation.
17-146.	Refunding bonds; power to issue.
17-147.	Fire department; organization and equipment.
17-148.	City council; president; acting president; powers.
17-149.	Transferred to section 17-574.
17-149.01.	Transferred to section 17-575.
17-150.	Sewerage system; establishment; estimates; duties of engineer; contracts; advertisement for bids.
17-151.	Sewerage system; establishment; borrowing money; conditions precedent.
17-153.	Sewerage system; bonds; sinking funds; investment.
17-154.	Sewers; right-of-way; condemnation; procedure.
17-155.	Board of equalization; counties under township organization; members; meetings.
17-157.	Joint city and school district facility; expense; bonds; election; approval by electors.
17-158.	Joint city and school district facility; indebtedness; bonds; principal and interest; in addition to other limitations.
17-159.	Joint city and school district facility; city council and board of education; building commission; powers; duties.
17-160.	Joint city and school district facility; building commission; plans and specifications; personnel; compensation; contracts.
17-161.	Joint city and school district facility; annual budget of city and school district.
17-162.	Joint city and school district facility; building commission; accept gifts.
17-163.	Offstreet parking; declaration of purpose.
17-164.	Offstreet parking; facilities; acquisition; procedure.
17-165.	Offstreet parking; revenue bonds; issuance; terms.
17-166.	Offstreet parking; plans and specifications; coordination with traffic control program.
17-167.	Offstreet parking; city council; rules and regulations; contracts; rates.
17-168.	Offstreet parking; acquisition of facilities; submission at election; notice.
17-169.	Offstreet parking; facilities; lease; controls retained; business restricted.
17-170.	Offstreet parking; private parking lot; not subject to eminent domain.
17-171.	Offstreet parking; rights of bondholders.
17-172.	Offstreet parking; revenue; use.

Section  
 17-174. City of second class; public passenger transportation system; acquire;  
 accept funds; administration; powers.

**17-101 City of the second class, defined; population; exception.**

Each municipality containing more than eight hundred and not more than five thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall be a city of the second class and be governed by sections 17-101 to 17-153 unless it adopts or retains a village form of government as provided in sections 17-306 to 17-312. The population of a city of the second class shall consist of the people residing within the territorial boundaries of such city and the residents of any territory duly and properly annexed to such city.

**Source:** Laws 1879, § 1, p. 193; Laws 1885, c. 16, § 1, p. 156; R.S.1913, § 4993; C.S.1922, § 4162; C.S.1929, § 17-101; R.S.1943, § 17-101; Laws 1971, LB 62, § 1; Laws 1993, LB 726, § 6; Laws 2014, LB702, § 1; Laws 2017, LB113, § 12; Laws 2017, LB133, § 1.  
 Effective date August 24, 2017.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB113, section 12, with LB133, section 1, to reflect all amendments.

**17-104 City council members; election; term; qualifications.**

Unless the city elects city council members at large as provided in section 32-554, each ward of each city of the second class shall have at least two city council members elected in the manner provided in the Election Act. The term of office shall begin on the first regular meeting of the city council in December following the statewide general election. No person shall be eligible to the office of city council member who is not at the time of the election an actual resident of the ward for which he or she is elected and a registered voter.

**Source:** Laws 1879, § 4, p. 194; R.S.1913, § 4996; C.S.1922, § 4165; C.S.1929, § 17-104; R.S.1943, § 17-104; Laws 1969, c. 257, § 6, p. 934; Laws 1973, LB 559, § 2; Laws 1979, LB 253, § 1; Laws 1981, LB 446, § 2; Laws 1994, LB 76, § 490; Laws 2016, LB702, § 2; Laws 2017, LB133, § 2.  
 Effective date August 24, 2017.

**Cross References**

**City council**, election, see section 32-533.

**Election Act**, see section 32-101.

**Vacancies**, see sections 32-568 and 32-569.

**17-105 City council; meetings; quorum.**

Regular meetings of the city council of a city of the second class shall be held at such times as the city council may provide by ordinance. A majority of all the members elected to the city council shall constitute a quorum for the transaction of any business, but a fewer number of members may adjourn from time to time and compel the attendance of absent members. Unless a greater vote is

required by law, an affirmative vote of at least one-half of the elected members shall be required for the transaction of any business.

**Source:** Laws 1879, § 5, p. 194; R.S.1913, § 4997; C.S.1922, § 4166; C.S.1929, § 17-105; R.S.1943, § 17-105; Laws 1995, LB 93, § 1; Laws 2017, LB133, § 3.  
Effective date August 24, 2017.

**17-106 City council; special meetings.**

The mayor or any three city council members of a city of the second class shall have power to call special meetings of the city council, the object of which shall be submitted to the city council in writing; and the call and object, as well as the disposition thereof, shall be entered upon the journal by the city clerk.

**Source:** Laws 1879, § 13, p. 196; R.S.1913, § 4998; C.S.1922, § 4167; C.S.1929, § 17-106; R.S.1943, § 17-106; Laws 2017, LB133, § 4.  
Effective date August 24, 2017.

**17-107 Mayor; qualifications; election; officers; appointment; removal; terms of office; police officers; appointment; removal, demotion, or suspension; procedure.**

(1) A mayor of a city of the second class shall be elected in the manner provided in the Election Act. The mayor shall take office on the date of the first regular meeting of the city council held in December following the statewide general election. The mayor shall be a resident and registered voter of the city. If the president of the city council assumes the office of mayor for the unexpired term, there shall be a vacancy on the city council which vacancy shall be filled as provided in section 32-568.

(2) The mayor, with the consent of the city council, may appoint such officers as shall be required by ordinance or otherwise required by law. Such officers may be removed from office by the mayor. The terms of office for all officers, except regular police officers, appointed by the mayor and confirmed by the city council shall be established by the city council by ordinance. The ordinance shall provide that either (a) the officers hold the office to which they have been appointed until the end of the mayor's term of office and until their successors are appointed and qualified unless sooner removed or (b) the officers hold office for one year unless sooner removed.

(3)(a) The mayor, by and with the consent of the city council, shall appoint such a number of regular police officers as may be necessary. All police officers appointed by the mayor and city council may be removed, demoted, or suspended at any time by the mayor as provided in subdivision (b) of this subsection. A police officer, including the chief of police, may appeal to the city council such removal, demotion, or suspension with or without pay. After a hearing, the city council may uphold, reverse, or modify the action.

(b) The city council shall by ordinance adopt rules and regulations governing the removal, demotion, or suspension with or without pay of any police officer, including the chief of police. The ordinance shall include a procedure for such removal, demotion, or suspension with or without pay of any police officer, including the chief of police, upon the written accusation of the police chief, the mayor, or any citizen or taxpayer. The city council shall establish by ordinance procedures for acting upon such written accusation, including: (i) Provisions for giving notice and a copy of the written accusation to the police officer; (ii)

the police officer's right to have an attorney or representative retained by the police officer present with him or her at all hearings or proceedings regarding the written accusation; (iii) the right of the police officer or his or her attorney or representative retained by the police officer to be heard and present evidence; and (iv) the right of the police officer as well as the individual imposing the action or their respective attorneys or representatives to record all hearings or proceedings regarding the written accusation. The ordinance shall also include a procedure for making application for an appeal, specifications on the period of time within which such application shall be made, and provisions on the manner in which the appeals hearing shall be conducted. Both the police officer and the individual imposing the action or their respective attorneys or representatives shall have the right at the hearing to be heard and to present evidence to the city council for its consideration. Not later than thirty days following the adjournment of the meeting at which the hearing was held, the city council shall vote to uphold, reverse, or modify the action. The failure of the city council to act within thirty days or the failure of a majority of the elected city council members to vote to reverse or modify the action shall be construed as a vote to uphold the action. The decision of the city council shall be based upon its determination that, under the facts and evidence presented at the hearing, the action was necessary for the proper management and the effective operation of the police department in the performance of its duties under the statutes of the State of Nebraska. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders.

(c) This subsection does not apply to a police officer during his or her probationary period.

**Source:** Laws 1879, § 6, p. 194; Laws 1881, c. 23, § 1, p. 168; R.S.1913, § 4999; Laws 1921, c. 155, § 1, p. 637; C.S.1922, § 4168; Laws 1923, c. 67, § 3, p. 203; Laws 1925, c. 36, § 1, p. 143; C.S.1929, § 17-107; R.S.1943, § 17-107; Laws 1955, c. 38, § 1, p. 151; Laws 1969, c. 257, § 7, p. 935; Laws 1972, LB 1032, § 104; Laws 1973, LB 559, § 2; Laws 1974, LB 1025, § 1; Laws 1976, LB 441, § 1; Laws 1976, LB 782, § 13; Laws 1994, LB 76, § 491; Laws 1995, LB 346, § 1; Laws 2009, LB158, § 1; Laws 2011, LB308, § 1; Laws 2017, LB133, § 5.

Effective date August 24, 2017.

#### Cross References

Election Act, see section 32-101.

### 17-108 Officers and employees; salaries.

The officers and employees of a city of the second class shall receive such compensation as the mayor and city council shall fix by ordinance.

**Source:** Laws 1879, § 7, p. 195; Laws 1881, c. 23, § 2, p. 168; Laws 1911, c. 16, § 1, p. 133; R.S.1913, § 5000; Laws 1919, c. 46, § 1, p. 130; C.S.1922, § 4169; C.S.1929, § 17-108; Laws 1935, c. 36, § 3, p. 149; C.S.Supp.,1941, § 17-108; Laws 1943, c. 30, § 2, p. 140; R.S.1943, § 17-108; Laws 1945, c. 25, § 1, p. 134; Laws 1947, c. 31, § 1(1), p. 140; Laws 1949, c. 21, § 1, p. 92; Laws 1953, c. 33,

§ 1, p. 123; Laws 1969, c. 89, § 1, p. 452; Laws 2017, LB133, § 6.

Effective date August 24, 2017.

**17-108.02 Officers and employees; merger of offices or employment; salaries.**

(1) All officers and employees of a city of the second class shall receive such compensation as the mayor and city council may fix at the time of their appointment or employment subject to the limitations set forth in this section.

(2) The city council may at its discretion by ordinance combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except mayor and city council member, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time.

(3) The city manager in a city of the second class under the city manager plan of government as provided in Chapter 19, article 6, may in his or her discretion combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except mayor and city council member, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time.

(4) The offices or employments merged and combined under subsection (2) or (3) of this section shall always be construed to be separate, and the effect of the combination or merger shall be limited to a consolidation of official duties only. The salary or compensation of the officer or employee holding the merged and combined offices or employments or offices and employments shall not be in excess of the maximum amount provided by law for the salary or compensation of the office, offices, employment, or employments so merged and combined.

(5) For purposes of this section, volunteer firefighters and ambulance drivers shall not be considered officers.

**Source:** Laws 1879, § 7, p. 195; Laws 1881, c. 23, § 2, p. 168; Laws 1911, c. 16, § 1, p. 133; R.S.1913, § 5000; Laws 1919, c. 46, § 1, p. 130; C.S.1922, § 4169; C.S.1929, § 17-108; Laws 1935, c. 36, § 3, p. 149; C.S.Supp.,1941, § 17-108; Laws 1943, c. 30, § 2, p. 140; R.S.1943, § 17-108; Laws 1945, c. 25, § 1, p. 135; Laws 1947, c. 31, § 1(3), p. 140; Laws 1972, LB 1145, § 2; Laws 1984, LB 368, § 2; Laws 1984, LB 682, § 7; Laws 1990, LB 756, § 2; Laws 1990, LB 931, § 3; Laws 1991, LB 12, § 2; Laws 1994, LB 76, § 492; Laws 2017, LB133, § 7.

Effective date August 24, 2017.

**17-110 Mayor; general duties and powers.**

The mayor shall preside at all meetings of the city council of a city of the second class. The mayor may vote when his or her vote would provide the additional vote required to attain the number of votes equal to a majority of the number of members elected to the city council on any pending matter, legislation, or transaction, and the mayor shall, for the purpose of such vote, be deemed to be a member of the city council. He or she shall have superintendence and control of all the officers and affairs of the city and shall take care

that the ordinances of the city and all laws governing cities of the second class are complied with.

**Source:** Laws 1879, § 10, p. 195; R.S.1913, § 5002; C.S.1922, § 4171; C.S.1929, § 17-110; R.S.1943, § 17-110; Laws 1957, c. 55, § 3, p. 266; Laws 1975, LB 172, § 3; Laws 1980, LB 662, § 4; Laws 2013, LB113, § 1; Laws 2017, LB133, § 8.  
Effective date August 24, 2017.

**17-111 Mayor; ordinances; veto power; passage over veto.**

The mayor in any city of the second class shall have power to veto or sign any ordinance passed by the city council and to approve or veto any order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim. If the mayor approves the ordinance, order, bylaw, resolution, contract, or claim, he or she shall sign it, and it shall become effective. If the mayor vetoes the ordinance, order, bylaw, resolution, contract, or any item or items of appropriations or claims, he or she shall return it to the city council stating that the measure is vetoed. The mayor may issue the veto at the meeting at which the measure passed or within seven calendar days after the meeting. If the mayor issues the veto after the meeting, the mayor shall notify the city clerk of the veto in writing. The city clerk shall notify the city council in writing of the mayor's veto. Any ordinance, order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim vetoed by the mayor may be passed over his or her veto by a vote of two-thirds of the members of the city council. If the mayor neglects or refuses to sign any ordinance, order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim, but fails to veto the measure within the time required by this section, the measure shall become effective without his or her signature. The mayor may veto any item or items of any appropriation bill or any claims bill, and approve the remainder thereof, and the item or items vetoed may be passed by the city council over the veto as in other cases.

**Source:** Laws 1879, § 11, p. 195; R.S.1913, § 5003; C.S.1922, § 4172; C.S.1929, § 17-111; R.S.1943, § 17-111; Laws 2014, LB803, § 2; Laws 2017, LB133, § 9.  
Effective date August 24, 2017.

**17-112 Mayor; recommendations to city council.**

The mayor in any city of the second class shall, from time to time, communicate to the city council such information and recommend such measures as, in his or her opinion, may tend to the improvement of the finances, the police, health, security, ornament, comfort, and general prosperity of the city.

**Source:** Laws 1879, § 12, p. 196; R.S.1913, § 5004; C.S.1922, § 4173; C.S.1929, § 17-112; R.S.1943, § 17-112; Laws 2017, LB133, § 10.  
Effective date August 24, 2017.

**17-113 Mayor; reports of officers; power to require.**

The mayor in any city of the second class shall have the power, when he or she deems it necessary, to require any officer of the city to exhibit his or her

accounts or other papers, and to make reports to the city council, in writing, touching any subject or matter pertaining to his or her office.

**Source:** Laws 1879, § 14, p. 196; R.S.1913, § 5005; C.S.1922, § 4174; C.S.1929, § 17-113; R.S.1943, § 17-113; Laws 2017, LB133, § 11.  
Effective date August 24, 2017.

**17-114 Mayor; territorial jurisdiction.**

The mayor in any city of the second class shall have such jurisdiction as may be vested in him or her by ordinance, over all places within five miles of the corporate limits of the city, for the enforcement of any health or quarantine ordinance and regulation thereof, and shall have jurisdiction in all matters vested in him or her by ordinance, excepting taxation, within the extraterritorial zoning jurisdiction of such city.

**Source:** Laws 1879, § 15, p. 196; R.S.1913, § 5006; C.S.1922, § 4175; C.S.1929, § 17-114; R.S.1943, § 17-114; Laws 2017, LB133, § 12.  
Effective date August 24, 2017.

**17-117 Mayor; remission of fines; pardons; powers.**

The mayor of a city of the second class shall have power to remit fines and forfeitures and to grant reprieves and pardons for all offenses arising under the ordinances of the city.

**Source:** Laws 1879, § 18, p. 196; R.S.1913, § 5009; C.S.1922, § 4178; C.S.1929, § 17-117; R.S.1943, § 17-117; Laws 2017, LB133, § 13.  
Effective date August 24, 2017.

**17-118 Police; arrest; power.**

The police officers of a city of the second class shall have the power to arrest all offenders against the laws of the state or of the city, by day or by night, in the same manner as the county sheriff and to keep such offenders in the city prison, county jail, or other place of confinement to prevent their escape until trial can be had before the proper officer.

**Source:** Laws 1879, § 19, p. 197; R.S.1913, § 5010; C.S.1922, § 4179; C.S.1929, § 17-118; R.S.1943, § 17-118; Laws 1988, LB 1030, § 5; Laws 2017, LB133, § 14.  
Effective date August 24, 2017.

**17-119 City overseer of streets; duties.**

The city overseer of the streets of a city of the second class shall, subject to the orders of mayor and city council, have general charge, direction, and control of all work on the streets, sidewalks, culverts, and bridges of the city, and shall perform such other duties as the city council may require.

**Source:** Laws 1879, § 21, p. 197; R.S.1913, § 5012; C.S.1922, § 4181; C.S.1929, § 17-120; R.S.1943, § 17-119; Laws 2017, LB133, § 15.  
Effective date August 24, 2017.



**17-120 Public morals; powers; restrictions.**

A city of the second class shall have the power to restrain, prohibit, and suppress houses of prostitution, gambling and gambling houses, and other disorderly houses and practices, and all kinds of public indecencies, and all lotteries or fraudulent devices and practices for the purpose of obtaining money or property, except that nothing in this section shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act. The city may license, regulate, or prohibit billiard halls and billiard tables, pool halls and pool tables, and bowling alleys.

**Source:** Laws 1879, § 39, I, p. 201; Laws 1881, c. 24, § 1, p. 194; R.S.1913, § 5014; Laws 1917, c. 99, § 1, p. 263; C.S.1922, § 4183; C.S.1929, § 17-122; R.S.1943, § 17-120; Laws 1986, LB 1027, § 189; Laws 1991, LB 849, § 62; Laws 1993, LB 138, § 64; Laws 2017, LB133, § 16.  
Effective date August 24, 2017.

**Cross References**

**Nebraska Bingo Act**, see section 9-201.  
**Nebraska Lottery and Raffle Act**, see section 9-401.  
**Nebraska Pickle Card Lottery Act**, see section 9-301.  
**Nebraska Small Lottery and Raffle Act**, see section 9-501.  
**State Lottery Act**, see section 9-801.

**17-121 Health and sanitation; rules and regulations; board of health; members; powers.**

(1) A city of the second class shall have the power to make regulations to prevent the introduction and spread of contagious, infectious, or malignant diseases into the city, to make quarantine laws for that purpose, and to enforce such regulations.

(2) In cities of the second class with a commission form of government as provided in Chapter 19, article 4, and cities of the second class with a city manager plan of government as provided in Chapter 19, article 6, a board of health shall be created consisting of five members: The mayor, who shall be chairperson, and four other members. One member shall be a physician or health care provider, if one can be found who is willing to serve. Such physician or health care provider, if appointed, shall be the board's medical advisor. If the city manager has appointed a chief of police, the chief of police shall serve on the board as secretary and quarantine officer.

(3) In all other cities of the second class, a board of health shall be created consisting of four members: The mayor, who shall be chairperson, the president of the city council, and two other members. One member shall be a physician or health care provider, if one can be found who is willing to serve. Such physician or health care provider, if appointed, shall be the board's medical advisor. If the mayor has appointed a chief of police, the chief of police shall serve on the board as secretary and quarantine officer.

(4) A majority of the board of health shall constitute a quorum and shall enact rules and regulations, which shall have the force and effect of law, to safeguard the health of the people of such city, may enforce them, and may provide fines and punishments for the violation of such rules and regulations. The board of health shall have power to and shall make all necessary rules and regulations

relating to matters of sanitation of such city, including the removal of dead animals, the sanitary condition of the streets, alleys, vacant grounds, stock-yards, wells, cisterns, privies, waterclosets, cesspools, and all buildings and places not specified where filth, nuisances, or offensive matter is kept or is liable to or does accumulate. The board of health may regulate, suppress, and prevent the occurrence of nuisances and enforce all laws of the state and ordinances of the city relating to nuisances or to matters of sanitation of such city. The board of health shall also have control of hospitals, dispensaries, places for treatment of sick, and related matters under such restrictions and provisions as may be provided by ordinance of such city.

**Source:** Laws 1879, § 39, II, p. 201; Laws 1881, c. 24, § 1, p. 194; Laws 1895, c. 14, § 1, II, p. 109; R.S.1913, § 5015; Laws 1919, c. 44, § 1, p. 128; C.S.1922, § 4184; C.S.1929, § 17-123; R.S.1943, § 17-121; Laws 1977, LB 190, § 2; Laws 1993, LB 119, § 2; Laws 1994, LB 1019, § 2; Laws 1996, LB 1162, § 1; Laws 2017, LB133, § 17.

Effective date August 24, 2017.

#### **17-122 Hospital; establishment and control.**

A city of the second class shall have the power to erect, establish, and regulate hospitals and to provide for the government and support of such hospitals.

**Source:** Laws 1879, § 39, III, p. 201; Laws 1881, c. 24, § 1, p. 194; R.S.1913, § 5016; C.S.1922, § 4185; C.S.1929, § 17-124; R.S. 1943, § 17-122; Laws 2017, LB133, § 18.

Effective date August 24, 2017.

#### **17-123 Public health; regulations; water; power to supply.**

A city of the second class shall have the power to make regulations to secure the general health of the city, to prevent and remove nuisances within the city and within its extraterritorial zoning jurisdiction, and to provide the city with water.

**Source:** Laws 1879, § 39, IV, p. 201; Laws 1881, c. 24, § 1, p. 194; R.S.1913, § 5017; C.S.1922, § 4186; C.S.1929, § 17-125; R.S. 1943, § 17-123; Laws 2015, LB266, § 8; Laws 2017, LB133, § 19.

Effective date August 24, 2017.

#### **17-123.01 Transferred to section 17-573.**

#### **17-124 Police; power to establish.**

A city of the second class shall have the power to establish a night watch and police and to define the duties and powers of such night watch and police.

**Source:** Laws 1879, § 39, V, p. 201; Laws 1881, c. 24, § 1, p. 195; R.S.1913, § 5018; C.S.1922, § 4187; C.S.1929, § 17-126; R.S. 1943, § 17-124; Laws 2017, LB133, § 20.

Effective date August 24, 2017.

#### **17-126 Public market; establishment; regulation.**

A city of the second class shall have the power to purchase, hold, and own grounds for and to erect, establish, and regulate market houses and market places.

**Source:** Laws 1879, § 39, VII, p. 201; Laws 1881, c. 24, § 1, p. 195; R.S.1913, § 5020; C.S.1922, § 4189; C.S.1929, § 17-128; R.S. 1943, § 17-126; Laws 2017, LB133, § 21.  
Effective date August 24, 2017.

**17-127 Public buildings; power to erect.**

A city of the second class shall have the power to provide for the erection and government of any useful or necessary building for the use of the city.

**Source:** Laws 1879, § 39, VIII, p. 201; Laws 1881, c. 24, § 1, p. 195; R.S.1913, § 5021; C.S.1922, § 4190; C.S.1929, § 17-129; R.S. 1943, § 17-127; Laws 2017, LB133, § 22.  
Effective date August 24, 2017.

**17-128 Repealed. Laws 2017, LB133, § 331.**

**17-129 Disorderly conduct; power to prevent.**

A city of the second class shall have the power to prevent intoxication, fighting, quarreling, dog fights, cock fights, and all disorderly conduct.

**Source:** Laws 1881, c. 24, § 1, p. 195; R.S.1913, § 5023; C.S.1922, § 4192; C.S.1929, § 17-131; R.S.1943, § 17-129; Laws 2017, LB133, § 23.  
Effective date August 24, 2017.

**17-130 Fire escapes; exits; regulation.**

A city of the second class shall have the power to regulate the use of any opera house, city hall, church, or other building used by the people for worship, for amusement, or for public assemblages to ensure that such opera house, city hall, church, or other building is provided with suitable, ample, and sufficient fire escapes and suitable, ample, and sufficient means of exit and entrance.

**Source:** Laws 1881, c. 24, § 1, p. 195; R.S.1913, § 5024; C.S.1922, § 4193; C.S.1929, § 17-132; R.S.1943, § 17-130; Laws 2017, LB133, § 24.  
Effective date August 24, 2017.

**17-131 Safety regulations.**

A city of the second class shall have the power to prescribe the thickness, strength, and manner of constructing stone, brick, and other buildings and to prescribe and direct the number and construction of means of exit and entrance and the construction of fire escapes in such buildings.

**Source:** Laws 1881, c. 24, § 1, p. 196; R.S.1913, § 5025; C.S.1922, § 4194; C.S.1929, § 17-133; R.S.1943, § 17-131; Laws 2017, LB133, § 25.  
Effective date August 24, 2017.

**17-132 Places of amusement; safety regulations; revocation of license.**

A city of the second class shall have the power (1) to regulate, license, tax, and suppress places of amusement, (2) to revoke the licenses of such places when they are not provided with sufficient and ample means of exit and entrance or when the licensee has been convicted of any violation of the ordinances in relation to such places, and (3) to declare from time to time when such place or places are unsafe for such uses.

**Source:** Laws 1881, c. 24, § 1, p. 195; R.S.1913, § 5026; C.S.1922, § 4195; C.S.1929, § 17-134; R.S.1943, § 17-132; Laws 2017, LB133, § 26.  
Effective date August 24, 2017.

**17-133 Repealed. Laws 2017, LB133, § 331.**

**17-134 Peddlers; pawnbrokers; entertainers; licensing and regulation.**

A city of the second class shall have the power by ordinance to license, tax, suppress, regulate, and prohibit hawkers, peddlers, pawnbrokers, theatrical and other exhibitions, shows, and other amusements and to revoke such licenses for violation of such ordinances.

**Source:** Laws 1881, c. 24, § 1, p. 196; R.S.1913, § 5028; C.S.1922, § 4197; C.S.1929, § 17-136; R.S.1943, § 17-134; Laws 2017, LB133, § 27.  
Effective date August 24, 2017.

**17-135 Repealed. Laws 2017, LB133, § 331.**

**17-136 Fire hazards; dangerous buildings; elimination.**

A city of the second class shall have the power to prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stovepipes, ovens, or boilers used in and about any building and to cause such to be removed or placed in a safe condition, as the city council may prescribe by ordinance. Such city may regulate and prevent by ordinance the deposit of ashes in unsafe places and cause all dangerous buildings and enclosures to be put in safe condition.

**Source:** Laws 1881, c. 24, § 1, p. 196; R.S.1913, § 5030; C.S.1922, § 4199; C.S.1929, § 17-138; R.S.1943, § 17-136; Laws 2017, LB133, § 28.  
Effective date August 24, 2017.

**17-137 Explosives; storage; fireworks; regulation.**

A city of the second class shall have the power to (1) regulate and prevent storage of gunpowder, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine, petroleum, or any of the productions thereof and other material, (2) regulate the use of lights in stables and shops and other places, (3) regulate the building of bonfires, and (4) regulate, prohibit, and restrain the use of fireworks, firecrackers, Roman candles, sky rockets, and other pyrotechnic displays.

**Source:** Laws 1881, c. 24, § 1, p. 196; R.S.1913, § 5031; C.S.1922, § 4200; C.S.1929, § 17-139; R.S.1943, § 17-137; Laws 2017, LB133, § 29.  
Effective date August 24, 2017.

**17-138 Animals; cruelty, prevention of.**

A city of the second class shall have the power by ordinance to prohibit and punish cruelty to animals.

**Source:** Laws 1881, c. 24, § 1, p. 197; R.S.1913, § 5032; C.S.1922, § 4201; C.S.1929, § 17-140; R.S.1943, § 17-138; Laws 2017, LB133, § 30.  
Effective date August 24, 2017.

**17-139 Traffic; sales; regulation.**

A city of the second class shall have the power by ordinance to regulate traffic and sales upon the streets, the sidewalks, and other public places.

**Source:** Laws 1881, c. 24, § 1, p. 197; R.S.1913, § 5033; C.S.1922, § 4202; C.S.1929, § 17-141; R.S.1943, § 17-139; Laws 2017, LB133, § 31.  
Effective date August 24, 2017.

**17-140 Signs and handbills; regulation.**

A city of the second class shall have the power to regulate and prevent the use of streets, sidewalks, and public grounds for signs, sign posts, racks, and the posting of handbills and advertisements.

**Source:** Laws 1881, c. 24, § 1, p. 197; R.S.1913, § 5034; C.S.1922, § 4203; C.S.1929, § 17-142; R.S.1943, § 17-140; Laws 2017, LB133, § 32.  
Effective date August 24, 2017.

**17-141 Sidewalks and substructures; regulation.**

A city of the second class shall have the power to regulate the use of sidewalks and all structures thereunder.

**Source:** Laws 1881, c. 24, § 1, p. 197; R.S.1913, § 5035; C.S.1922, § 4204; C.S.1929, § 17-143; R.S.1943, § 17-141; Laws 2017, LB133, § 33.  
Effective date August 24, 2017.

**17-142 Streets; moving of buildings; other obstructions; regulation.**

A city of the second class shall have the power to regulate and prevent the moving of buildings through the streets and to regulate and prohibit the piling of building material or any excavation or obstruction of the streets.

**Source:** Laws 1881, c. 24, § 1, p. 197; R.S.1913, § 5036; C.S.1922, § 4205; C.S.1929, § 17-144; R.S.1943, § 17-142; Laws 2017, LB133, § 34.  
Effective date August 24, 2017.

**17-143 Railroads; location, grade, and crossing; regulation.**

A city of the second class shall have the power to provide for and change the location, grade, and crossing of any railroad.

**Source:** Laws 1881, c. 24, § 1, p. 197; R.S.1913, § 5037; C.S.1922, § 4206; C.S.1929, § 17-145; R.S.1943, § 17-143; Laws 2017, LB133, § 35.  
Effective date August 24, 2017.

**17-144 Repealed. Laws 2017, LB133, § 331.****17-145 Sewers and drains; regulation.**

A city of the second class shall have the power to construct and keep in repair culverts, drains, sewers, and cesspools and to regulate the use of such culverts, drains, sewers, and cesspools.

**Source:** Laws 1881, c. 24, § 1, p. 198; R.S.1913, § 5039; C.S.1922, § 4208; C.S.1929, § 17-147; R.S.1943, § 17-145; Laws 2017, LB133, § 36.

Effective date August 24, 2017.

**17-146 Refunding bonds; power to issue.**

A city of the second class shall have the power to issue bonds in place of or to supply means to meet its maturing bonds or for the consolidation or funding of such bonds.

**Source:** Laws 1881, c. 24, § 1, p. 198; R.S.1913, § 5040; C.S.1922, § 4209; C.S.1929, § 17-148; R.S.1943, § 17-146; Laws 2017, LB133, § 37.

Effective date August 24, 2017.

**17-147 Fire department; organization and equipment.**

A city of the second class shall have the power to procure fire engines, hooks, ladders, buckets, and other apparatus, to organize fire engine, hook and ladder, and bucket companies, to prescribe rules of duty and the government of the fire department with such penalties as the city council may deem proper, not exceeding one hundred dollars, and to make all necessary appropriations for the fire department.

**Source:** Laws 1879, § 39, IX, p. 201; Laws 1881, c. 24, § 1, p. 198; R.S.1913, § 5041; C.S.1922, § 4210; C.S.1929, § 17-149; R.S. 1943, § 17-147; Laws 2017, LB133, § 38.

Effective date August 24, 2017.

**17-148 City council; president; acting president; powers.**

In each city of the second class, the city council shall elect one of its own body who shall be styled the president of the city council and who shall preside at all meetings of the city council in the absence of the mayor. In the absence of the president, the city council shall elect one of its own body to occupy his or her place temporarily, who shall be styled acting president of the city council. The president, and acting president, when occupying the place of the mayor, shall have the same privileges as other members of the city council; and all acts of the president or acting president, while so acting, shall be as binding upon the city council and upon the city as if done by the mayor.

**Source:** Laws 1879, § 39, X, p. 201; Laws 1881, c. 24, § 1, p. 198; R.S.1913, § 5042; C.S.1922, § 4211; C.S.1929, § 17-150; R.S. 1943, § 17-148; Laws 2017, LB133, § 39.

Effective date August 24, 2017.

**17-149 Transferred to section 17-574.****17-149.01 Transferred to section 17-575.**

**17-150 Sewerage system; establishment; estimates; duties of engineer; contracts; advertisement for bids.**

The city engineer in a city of the second class, when ordered to do so by the city council, shall make all surveys, estimates, and calculations necessary to be made for the establishment of a sewerage system and of the cost of labor and materials for such system. The mayor and city council may employ a special engineer to make or assist in making any such estimate or survey, and any such estimate or survey shall have the same validity and serve in all respects as though made by the city engineer. Before the city council shall make any contract for building any such sewers or any part of such sewers, an estimate of the cost of such sewers shall be made by the city engineer, or by a special engineer as provided by this section, and submitted to the city council, and no contract shall be entered into for the building of any such sewers or any part of such sewers for a price exceeding such estimate. In advertising for bids for any such work or materials, the city council shall cause the amount of such estimate to be published with such advertisement for at least twenty days in a legal newspaper in or of general circulation in the city.

**Source:** Laws 1903, c. 22, § 2, p. 255; R.S.1913, § 5044; C.S.1922, § 4213; C.S.1929, § 17-152; R.S.1943, § 17-150; Laws 2017, LB133, § 40.  
Effective date August 24, 2017.

**17-151 Sewerage system; establishment; borrowing money; conditions precedent.**

Before submitting any proposition for borrowing money for the purposes mentioned in section 17-150, the mayor and city council of a city of the second class shall determine upon a system of sewerage and shall procure from the city engineer an estimate of the actual cost of such system and of the cost of the portion of such sewer as the mayor and city council may propose to construct, with the amount proposed to be borrowed and the plans of such system. Such estimate shall be placed and remain in the hands of the city clerk, subject to public inspection during all the time such proposition to borrow money shall be pending. After such system shall have been adopted, no change shall be made to such system involving an expense of more than one thousand dollars, nor shall any other system be adopted in lieu of such system, unless authorized by a vote of the people.

**Source:** Laws 1903, c. 22, § 4, p. 256; R.S.1913, § 5045; C.S.1922, § 4214; C.S.1929, § 17-153; R.S.1943, § 17-151; Laws 2017, LB133, § 41.  
Effective date August 24, 2017.

**17-153 Sewerage system; bonds; sinking funds; investment.**

All taxes levied for the purpose of raising money to pay the interest or to create a sinking fund for the payment of the bonds provided for in section 17-925, shall be payable in money only. Except as otherwise provided, no money so obtained shall be used for any other purpose than the payment of the interest or debt for the payment of which they shall have been raised. Such sinking fund may, under the direction of the mayor and city council, be invested in any of the underdue bonds issued by such city of the second class, and such bonds may be procured by the city treasurer at such rate of premium

as shall be prescribed by ordinance. Any due or overdue bond or coupon shall be a sufficient warrant or order for the payment of the same by the city treasurer, out of any fund specially created for that purpose, without any further order or allowance by the mayor and city council.

**Source:** Laws 1903, c. 22, § 8, p. 258; R.S.1913, § 5047; C.S.1922, § 4216; C.S.1929, § 17-155; R.S.1943, § 17-153; Laws 2017, LB133, § 42.  
Effective date August 24, 2017.

**17-154 Sewers; right-of-way; condemnation; procedure.**

In case of the refusal of the owner or owners or claimant or claimants of any lands or any right-of-way, or any easement in any lands through which cities of the second class propose to construct any sewer or drain or any outlet for any sewer or drain, to allow the passage of such sewer or drain, the city proposing to construct such sewer or drain, and desiring the right-of-way may proceed to acquire such right-of-way by the exercise of the power of eminent domain. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

**Source:** Laws 1905, c. 28, § 1, p. 253; R.S.1913, § 5049; C.S.1922, § 4218; C.S.1929, § 17-157; R.S.1943, § 17-154; Laws 1951, c. 101, § 55, p. 472; Laws 2017, LB133, § 43.  
Effective date August 24, 2017.

**17-155 Board of equalization; counties under township organization; members; meetings.**

In all cities of the second class in counties under township organization, the city council shall constitute a board of equalization for such city, whose duty it shall be to meet and equalize the assessments of such city at the same time and in the same manner as provided by law for townships in counties under township organization.

**Source:** Laws 1889, c. 76, § 1, p. 537; R.S.1913, § 5050; C.S.1922, § 4219; C.S.1929, § 17-158; R.S.1943, § 17-155; Laws 2017, LB133, § 44.  
Effective date August 24, 2017.

**17-157 Joint city and school district facility; expense; bonds; election; approval by electors.**

The cost and expense of acquiring land for, erecting, equipping, furnishing, and maintaining a joint municipal and recreation building or joint recreational and athletic field under section 17-156 shall be borne by the school district and city of the second class in the proportion determined by the board of education of the school district and the city council. The building shall not be erected or contracted to be erected, no land shall be acquired for such buildings, and no bonds shall be issued or sold by the school district or the city of the second class until the school district and the city of the second class have each been authorized to issue bonds to defray its proportion of the cost of such land, building, equipment, and furnishings by the required number of electors of the school district and the city of the second class in the manner provided by sections 10-702 to 10-716 and 17-954. When funds and property are available for such purpose, land may be acquired, buildings erected, or equipment and



furnishings supplied by a joint resolution of the school district and the city of the second class without a vote of the people.

**Source:** Laws 1953, c. 37, § 2, p. 128; Laws 1955, c. 39, § 2, p. 152; Laws 2017, LB133, § 45.

Effective date August 24, 2017.

**17-158 Joint city and school district facility; indebtedness; bonds; principal and interest; in addition to other limitations.**

The amount of indebtedness, authorized to be incurred by any school district or city of the second class for the payment of principal and interest for the bonds authorized by the provisions of sections 17-156 to 17-162 shall be in addition to and over and above any limits under applicable law.

**Source:** Laws 1953, c. 37, § 3, p. 128; Laws 2017, LB133, § 46.

Effective date August 24, 2017.

**17-159 Joint city and school district facility; city council and board of education; building commission; powers; duties.**

The members of the board of education of the school district and the city council of the city of the second class, which board and city council have agreed to build a joint municipal and recreation building or joint recreational and athletic field under sections 17-156 to 17-162, shall be the building commission to purchase the land for the building and to contract for the erection, equipment, and furnishings of the building or the recreational and athletic field. After the completion of such building or field, the building commission shall be in charge of the maintenance and repair of such building or field.

**Source:** Laws 1953, c. 37, § 4, p. 129; Laws 1955, c. 39, § 3, p. 153; Laws 2017, LB133, § 47.

Effective date August 24, 2017.

**17-160 Joint city and school district facility; building commission; plans and specifications; personnel; compensation; contracts.**

The building commission shall cause to be prepared building plans and specifications for the joint building or joint recreational and athletic field and may employ architects, engineers, and such clerical help as may be deemed necessary for the purpose of preparing such plans and specifications. The compensation of such personnel shall be fixed by the commission and shall be paid in the same proportion as determined for defraying the cost of such building or field as provided for in section 17-157. The contract for erecting the building, for the equipment, and for furnishings shall be let by the commission in the same manner as for other public buildings. The members of the commission shall receive no compensation for their services as members of the commission.

**Source:** Laws 1953, c. 37, § 5, p. 129; Laws 1955, c. 39, § 4, p. 153; Laws 2017, LB133, § 48.

Effective date August 24, 2017.

**17-161 Joint city and school district facility; annual budget of city and school district.**

The school district and the city of the second class shall each provide in their annual budgets an item for their proportion of the expense of maintaining any joint municipal and recreation building or joint recreational and athletic field built pursuant to section 17-156.

**Source:** Laws 1953, c. 37, § 6, p. 129; Laws 1955, c. 39, § 5, p. 154; Laws 2017, LB133, § 49.

Effective date August 24, 2017.

**17-162 Joint city and school district facility; building commission; accept gifts.**

The building commission shall have the power to accept gifts, devises, and bequests of real and personal property to carry out the purposes of sections 17-156 to 17-162 and, to the extent of the powers conferred upon the building commission by sections 17-156 to 17-162, to execute and carry out such conditions as may be annexed to any such gifts, devises, or bequests.

**Source:** Laws 1953, c. 37, § 7, p. 129; Laws 2017, LB133, § 50.

Effective date August 24, 2017.

**17-163 Offstreet parking; declaration of purpose.**

The Legislature finds and declares that the great increase in the number of motor vehicles, buses, and trucks in Nebraska has created hazards to life and property in cities of the second class in the state. In order to remove or reduce such hazards to life and property and the inconvenience of congested traffic on the streets in such cities in this state, it is hereby deemed necessary and of general benefit to the entire State of Nebraska to provide means for such cities in Nebraska to own offstreet vehicle parking facilities exclusively for the parking of motor vehicles.

**Source:** Laws 1957, c. 29, § 1, p. 185; Laws 2017, LB133, § 51.

Effective date August 24, 2017.

**Cross References**

For applicability of sections 17-163 to 17-173 to villages, see sections 17-207.01 and 17-207.02.

**17-164 Offstreet parking; facilities; acquisition; procedure.**

Any city of the second class is hereby authorized to own, purchase, construct, equip, lease, or operate within such city offstreet motor vehicle parking facilities for the use of the general public. This does not include the power to engage, directly or indirectly, in the sale of gasoline, oil, or other merchandise or in the furnishing of any service other than that of parking motor vehicles as provided in this section. Such city shall have the authority to acquire by grant, contract, purchase, or through the condemnation of property, as provided by law for such acquisition, all real or personal property, including a site or sites on which to construct such facilities, necessary or convenient in the carrying out of this section. Before any such city may commence a program to construct, purchase, or acquire by other means a proposed offstreet parking facility or facilities, notice shall be given, by publication in a legal newspaper in or of general circulation in the city once each week for not less than thirty days, inviting application for private ownership and operation of offstreet parking facilities. If no application or applications have been received or, if received, the application or applications have been disapproved by the city council within ninety

days from the first date of publication, then such city may proceed in the exercise of the powers granted under this section.

**Source:** Laws 1957, c. 29, § 2, p. 186; Laws 2017, LB133, § 52.  
Effective date August 24, 2017.

**17-165 Offstreet parking; revenue bonds; issuance; terms.**

In order to pay the cost required by any purchase, construction, lease, or condemnation of property and equipping of parking facilities or the enlargement of presently owned parking facilities, a city of the second class may issue revenue bonds to provide the funds for such improvements. Such revenue bonds shall not be payable from any general tax upon the issuing city, but shall be a lien only upon the revenue and earnings of the parking facilities. Such revenue bonds shall mature in not to exceed forty years but may be optional prior to maturity at a premium as provided in the authorizing resolution or ordinance. Any such revenue bonds which may be issued shall not be included in computing the maximum amounts of bonds which the issuing city may be authorized to issue under its charter or any statute of this state. Such revenue bonds may be issued and sold or delivered to the contractor at par and accrued interest for the amount of work performed. If any city of the second class has installed or installs onstreet parking meters, it may pledge all or any part of the revenue of such parking meters, not previously pledged, as security for the bonds authorized under sections 17-163 to 17-173.

**Source:** Laws 1957, c. 29, § 3, p. 186; Laws 1969, c. 51, § 42, p. 297;  
Laws 2017, LB133, § 53.  
Effective date August 24, 2017.

**17-166 Offstreet parking; plans and specifications; coordination with traffic control program.**

Before the issuance of any revenue bonds under section 17-165, the city of the second class shall have an independent and qualified firm of engineers prepare plans and specifications for such improvements. In the preparation of the plans and specifications, the independent engineer shall collaborate and counsel with any city engineering or traffic departments so as to coordinate the program with the program for the control of traffic within such city.

**Source:** Laws 1957, c. 29, § 4, p. 187; Laws 2017, LB133, § 54.  
Effective date August 24, 2017.

**17-167 Offstreet parking; city council; rules and regulations; contracts; rates.**

Before the issuance of any revenue bonds as provided under section 17-165, the city council of a city of the second class shall make all necessary rules and regulations governing the use, operation, and control of such improvements. In carrying out sections 17-163 to 17-173, the city of the second class may make contracts with other departments of the city, or others, if such contracts are necessary and needed for the payment of the revenue bonds authorized under section 17-165 and for the successful operation of the parking facilities. The city council shall also establish and maintain equitable rates or charges for such services sufficient in amount to pay for the cost of operation, repair, and upkeep of the facilities to be purchased, acquired, or leased and the principal of

and interest on any revenue bonds issued pursuant to sections 17-163 to 17-173. The city council may also make any other agreements with the purchasers of the bonds for the security of the issuing city and the purchasers of such bonds not in contravention with sections 17-163 to 17-173.

**Source:** Laws 1957, c. 29, § 5, p. 187; Laws 2017, LB133, § 55.  
Effective date August 24, 2017.

**17-168 Offstreet parking; acquisition of facilities; submission at election; notice.**

The mayor and city council of any city of the second class may adopt by ordinance the proposition to make such purchase, or to erect such facility or facilities, set forth in section 17-164, and before the purchase can be made or facility created, must submit the question to the electors of such city at a general municipal election or at a special election called for that purpose and the question must be approved by a majority of the electors voting on such question. If the question is submitted at a special election, the vote for the purchase or acquisition of such real estate or the purchase or erection of such facility or facilities shall equal at least a majority of the votes cast at the last preceding general election. Notice of the time and place of the election shall be given by publication in a legal newspaper in or of general circulation in such city three successive weeks prior to such election.

**Source:** Laws 1957, c. 29, § 6, p. 188; Laws 2017, LB133, § 56.  
Effective date August 24, 2017.

**17-169 Offstreet parking; facilities; lease; controls retained; business restricted.**

On the creation of a motor vehicle parking facility as provided under section 17-164 for the use of the general public, the city of the second class may lease such facility to one or more operators to provide for the efficient operation of the facility. Such lease shall be let on a competitive basis, and no lease shall run for a period in excess of ten years. In granting any lease, the city shall retain such control of the facility as may be necessary to insure that the facility will be properly operated in the public interest and that the prices charged are reasonable. The provisions of sections 17-163 to 17-173 shall not be construed to authorize the city or the lessee of the facility to engage in the sale of any commodity, product, or service or to engage in any business other than the purposes set forth in section 17-164.

**Source:** Laws 1957, c. 29, § 7, p. 188; Laws 2017, LB133, § 57.  
Effective date August 24, 2017.

**17-170 Offstreet parking; private parking lot; not subject to eminent domain.**

Property now used or hereafter acquired within the boundaries of a city of the second class for offstreet motor vehicle parking by a private operator shall not be subject to condemnation.

**Source:** Laws 1957, c. 29, § 8, p. 188; Laws 2017, LB133, § 58.  
Effective date August 24, 2017.

**17-171 Offstreet parking; rights of bondholders.**

The provisions of sections 17-163 to 17-173 and of any ordinance authorizing the issuance of bonds under sections 17-163 to 17-173 shall constitute a contract with the holders of such bonds, and any holder of a bond or bonds or any of the coupons of any bond or bonds of such city, issued under the provisions of sections 17-163 to 17-173, may either in law or in equity, by suit, action, mandamus, or other proceedings, enforce and compel the performance of all duties required by the provisions of sections 17-163 to 17-173 or by the ordinance authorizing the bonds, including the making and collection of sufficient charges and fees for service and the use thereof and the application of income and revenue thereof.

**Source:** Laws 1957, c. 29, § 9, p. 189; Laws 2017, LB133, § 59.  
Effective date August 24, 2017.

**17-172 Offstreet parking; revenue; use.**

Any city of the second class is authorized to use any or all of the revenue from onstreet parking meters for the purpose set forth in section 17-164 if such revenue has not been pledged for the payment of revenue bonds authorized in sections 17-163 to 17-173.

**Source:** Laws 1957, c. 29, § 10, p. 189; Laws 2017, LB133, § 60.  
Effective date August 24, 2017.

**17-174 City of second class; public passenger transportation system; acquire; accept funds; administration; powers.**

A city of the second class shall have the power by ordinance to acquire, by the exercise of the power of eminent domain or otherwise, lease, purchase, construct, own, maintain, and operate, or contract for the operation of public passenger transportation systems, excluding railroad systems, including all property and facilities required for such public passenger transportation systems, within and without the limits of the city, to redeem such property from prior encumbrance in order to protect or preserve the interest of the city in such property, to exercise all powers granted by the Constitution and laws of the State of Nebraska, including, but not limited to, receiving and accepting from the government of the United States or any agency thereof, from the State of Nebraska or any subdivision thereof, and from any person or corporation, donations, devises, gifts, bequests, loans, or grants for or in aid of the acquisition, operation, and maintenance of such public passenger transportation systems, and to administer, hold, use, and apply the same for the purposes for which such donations, devises, gifts, bequests, loans, or grants may have been made, to negotiate with employees and enter into contracts of employment, to employ by contract or otherwise individuals singularly or collectively, to enter into agreements authorized under the Interlocal Cooperation Act or the Joint Public Agency Act, and to exercise such other and further powers with respect thereto as may be necessary, incident, or appropriate to the powers of such city.

**Source:** Laws 1975, LB 395, § 2; Laws 1999, LB 87, § 62; Laws 2017, LB133, § 61.  
Effective date August 24, 2017.

**Cross References**

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

## ARTICLE 2

## LAWS APPLICABLE ONLY TO VILLAGES

Section	
17-201.	Village, defined; incorporation; restriction on territory; condition.
17-201.01.	Villages; incorporation; presumption of regularity of proceedings.
17-202.	Board of trustees; election; terms.
17-204.	Board of trustees; oath; meetings.
17-205.	Board of trustees; quorum; compulsory attendance.
17-206.	Board of trustees; journal; roll calls; public proceedings.
17-207.	Board of trustees; powers; restrictions.
17-207.01.	Offstreet motor vehicle parking; acquisition; procedure.
17-208.	Appointive officers; term of office; police officer; removal, demotion, or suspension; procedure; board of health; members; duties.
17-209.	Appointed officers and employees; compensation; fixed by ordinance.
17-209.02.	Officers and employees; merger of offices; salaries.
17-210.	Board of trustees; ordinances; publication; chairperson pro tempore.
17-211.	Elections; notice.
17-212.	Elections; officers of election; vacancies; how filled.
17-213.	Village chief of police; powers and duties.
17-213.01.	Village engineer; powers and duties.
17-214.	Village overseer of streets; power and duties.
17-215.	Village; dissolution; how effected.
17-216.	Village; dissolution; petition or resolution; election.
17-217.	Village; dissolution; election; form of ballot.
17-218.	Village; dissolution; when effective.
17-219.	Village; dissolution; village property, records, and funds; disposition.
17-219.01.	Village; dissolution; property; sale by county board; when authorized.
17-219.02.	Village; dissolution; property; sale; notice.
17-219.03.	Village; dissolution; board of trustees; county board; duties.
17-220.	Village situated in more than one county; how organized.
17-222.	Village situated in more than one county; jails.
17-223.	Village situated in more than one county; tax; how certified.
17-224.	Village situated in more than one county; legal notices; publication.
17-225.	Railroads; blocking crossings; penalty.
17-229.	Street improvement program; authorization; tax levy.
17-230.	Street improvement program; tax levy limitation.
17-231.	Street improvement program; construction of improvements; issuance of warrants; interest; unused funds transferred to general fund.

**17-201 Village, defined; incorporation; restriction on territory; condition.**

(1) Any municipality containing not less than one hundred nor more than eight hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census incorporated as a village under the laws of this state, any village that votes to retain village government as provided in section 17-312, and any city of the second class that has adopted village government as provided by sections 17-306 to 17-309 shall be a village and shall have the rights, powers, and immunities granted by law to villages. The population of a village shall consist of the people residing within the territorial boundaries of such village and the residents of any territory duly and properly annexed to such village.

(2) Whenever a majority of the inhabitants of any village, not incorporated under any laws of this state, present a petition to the county board of the county in which the petitioners reside, requesting that they may be incorporated as a village and designating the name they wish to assume and the metes and bounds of the proposed village, and a majority of the members of such county board are satisfied that a majority of the inhabitants of the proposed village

have signed such petition and that inhabitants to the number of one hundred or more are actual residents of the territory described in the petition, the county board shall declare the proposed village incorporated, enter the order of incorporation upon its records, and designate the metes and bounds of such village. Thereafter the village shall be governed by the provisions of law applicable to the government of villages. The county board shall, at the time of the incorporation of the village, appoint five persons, having the qualifications provided in section 17-203, as the village board of trustees, who shall hold their offices and perform all the duties required of them by law until the election and qualification of their successors at the time and in the manner provided in section 17-202, except that the county board shall not declare a proposed village incorporated or enter an order of incorporation if any portion of the territory of such proposed village is within five miles of another incorporated municipality.

**Source:** Laws 1879, § 40, p. 202; Laws 1881, c. 22, § 1, p. 165; Laws 1913, c. 137, § 1, p. 335; R.S.1913, § 5051; C.S.1922, § 4223; C.S.1929, § 17-201; R.S.1943, § 17-201; Laws 1961, c. 48, § 1, p. 188; Laws 1969, c. 91, § 1, p. 454; Laws 1971, LB 62, § 2; Laws 1993, LB 726, § 7; Laws 2014, LB702, § 2; Laws 2017, LB113, § 13; Laws 2017, LB133, § 62.  
Effective date August 24, 2017.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB113, section 13, with LB133, section 62, to reflect all amendments.

#### **17-201.01 Villages; incorporation; presumption of regularity of proceedings.**

When a county board has entered an order declaring any village within the county as incorporated, it shall be conclusively presumed that such incorporation and all proceedings in connection therewith are valid in all respects notwithstanding some defect or defects that may appear on the face of the record, or the absence of any record, unless an action shall be brought within one year from the date of entry of such order of the county board, attacking its validity.

**Source:** Laws 1961, c. 48, § 2, p. 189; Laws 2017, LB133, § 63.  
Effective date August 24, 2017.

#### **17-202 Board of trustees; election; terms.**

The corporate powers and duties of every village shall be vested in a board of trustees which shall consist of five members. At the first statewide general election held after the incorporation of a village, two trustees shall be elected to serve two years and three trustees shall be elected to serve four years. Thereafter the board members shall be elected as provided in the Election Act. The terms shall begin on the first regular meeting of the board in December following the statewide general election. The changes made to this section by Laws 1994, LB 76, and Laws 1995, LB 194, shall not change the staggering of the terms of the board members in villages established prior to January 1, 1995.

**Source:** Laws 1879, § 41, p. 202; Laws 1899, c. 13, § 1, p. 78; R.S.1913, § 5052; C.S.1922, § 4224; C.S.1929, § 17-202; Laws 1943, c. 26, § 1, p. 120; R.S.1943, § 17-202; Laws 1969, c. 257, § 9, p. 936; Laws 1994, LB 76, § 493; Laws 1995, LB 194, § 3; Laws 2017, LB133, § 64.  
Effective date August 24, 2017.

## Cross References

**Board of trustees**, election, see section 32-532.

**Election Act**, see section 32-101.

**Vacancies**, see sections 32-568 and 32-569.

**17-204 Board of trustees; oath; meetings.**

Every village trustee, before entering upon the duties of his or her office, shall take an oath to support the Constitution of the United States and the Constitution of Nebraska and faithfully and impartially to discharge the duties of his or her office. Every village board of trustees appointed by the county board shall meet within twenty days, organize, and appoint the officers required by law. All trustees elected to office shall qualify and meet on the first regular meeting of the village board of trustees in December thereafter, organize, elect a chairperson of the board of trustees, and appoint the officers required by law. The village board of trustees shall, by ordinance, fix the time and place of holding its stated meetings and may be convened at any time by the chairperson.

**Source:** Laws 1879, § 43, p. 203; Laws 1913, c. 216, § 1, p. 646; R.S.1913, § 5054; C.S.1922, § 4226; C.S.1929, § 17-204; R.S. 1943, § 17-204; Laws 1974, LB 897, § 1; Laws 1995, LB 194, § 4; Laws 2017, LB133, § 65.  
Effective date August 24, 2017.

**17-205 Board of trustees; quorum; compulsory attendance.**

At all meetings of the village board of trustees, a majority of the trustees shall constitute a quorum to do business. A smaller number may adjourn from day to day and may compel the attendance of absent members in such manner and under such penalties as prescribed by the village board of trustees by ordinance.

**Source:** Laws 1879, § 44, p. 203; R.S.1913, § 5055; C.S.1922, § 4227; C.S.1929, § 17-205; R.S.1943, § 17-205; Laws 2017, LB133, § 66.  
Effective date August 24, 2017.

**17-206 Board of trustees; journal; roll calls; public proceedings.**

The village board of trustees shall keep a journal of the board's proceedings and, at the desire of any member, shall cause the yeas and nays to be taken and entered on the journal on any question or ordinance, and the proceedings shall be public.

**Source:** Laws 1879, § 45, p. 203; R.S.1913, § 5056; C.S.1922, § 4228; C.S.1929, § 17-206; R.S.1943, § 17-206; Laws 2017, LB133, § 67.  
Effective date August 24, 2017.

**17-207 Board of trustees; powers; restrictions.**

The village board of trustees shall have power to pass ordinances: (1) To prevent and remove nuisances within the village or within its extraterritorial zoning jurisdiction; (2) to restrain and prohibit gambling; (3) to provide for licensing and regulating theatrical and other amusements within the village; (4) to prevent the introduction and spread of contagious diseases; (5) to establish and regulate markets; (6) to erect and repair bridges; (7) to erect, repair, and



regulate wharves; (8) to regulate the landing of watercraft; (9) to provide for the inspection of building materials to be used or offered for sale in the village; (10) to govern the planting and protection of shade trees in the streets and the building of structures projecting upon or over and adjoining, and all excavations through and under, the sidewalks of the village; (11) to maintain the peace, good government, and welfare of the village and its trade and commerce; and (12) to enforce all ordinances by inflicting penalties upon inhabitants or other persons, for the violation of such ordinances, not exceeding five hundred dollars for any one offense, recoverable with costs. Nothing in this section shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act.

**Source:** Laws 1879, § 46, p. 203; Laws 1907, c. 15, § 1, p. 123; R.S.1913, § 5057; C.S.1922, § 4229; C.S.1929, § 17-207; R.S.1943, § 17-207; Laws 1986, LB 1027, § 190; Laws 1991, LB 849, § 63; Laws 1993, LB 138, § 65; Laws 1999, LB 128, § 1; Laws 2015, LB266, § 10; Laws 2017, LB133, § 68.  
Effective date August 24, 2017.

#### Cross References

Nebraska Bingo Act, see section 9-201.  
Nebraska Lottery and Raffle Act, see section 9-401.  
Nebraska Pickle Card Lottery Act, see section 9-301.  
Nebraska Small Lottery and Raffle Act, see section 9-501.  
State Lottery Act, see section 9-801.

#### **17-207.01 Offstreet motor vehicle parking; acquisition; procedure.**

Any village is hereby authorized to own, purchase, construct, equip, lease, or operate within such village offstreet motor vehicle parking facilities for the use of the general public. This does not include the power to engage, directly or indirectly, in the sale of gasoline, oil, or other merchandise or in the furnishing of any service other than that of parking motor vehicles as provided in this section. Such village shall have the authority to acquire by grant, contract, purchase, or through the condemnation of property, as provided by law for such acquisition, all real or personal property, including a site or sites on which to construct such facilities, necessary or convenient in the carrying out of this section. Before any village may commence a program to construct, purchase, or acquire by other means a proposed offstreet parking facility or facilities, notice shall be given, by publication in a legal newspaper in or of general circulation in the village once each week for not less than thirty days, inviting application for private ownership and operation of offstreet parking facilities. If no application or applications have been received or, if received, the application or applications have been disapproved by the village board of trustees within ninety days from the first date of publication, then such village may proceed in the exercise of the powers granted under this section.

**Source:** Laws 1961, c. 50, § 1, p. 191; Laws 2017, LB133, § 69.  
Effective date August 24, 2017.

**17-208 Appointive officers; term of office; police officer; removal, demotion, or suspension; procedure; board of health; members; duties.**

(1) The village board of trustees may appoint a village clerk, treasurer, attorney, engineer, overseer of the streets, and chief of police and other such officers as shall be required by ordinance or otherwise required by law.

(2)(a) The village chief of police or any other police officer may appeal to the village board of trustees his or her removal, demotion, or suspension with or without pay. After a hearing, the village board of trustees may uphold, reverse, or modify the action.

(b) The village board of trustees shall by ordinance adopt rules and regulations governing the removal, demotion, or suspension with or without pay of any police officer, including the village chief of police. The ordinance shall include a procedure for such removal, demotion, or suspension with or without pay of any police officer, including the village chief of police, upon the written accusation of the village chief of police, the chairperson of the village board of trustees, or any citizen or taxpayer. The village board of trustees shall establish by ordinance procedures for acting upon such written accusation, including: (i) Provisions for giving notice and a copy of the written accusation to the police officer; (ii) the police officer's right to have an attorney or representative retained by the police officer present with him or her at all hearings or proceedings regarding the written accusation; (iii) the right of the police officer or his or her attorney or representative retained by the police officer to be heard and present evidence; and (iv) the right of the police officer as well as the individual imposing the action or their respective attorneys or representatives to record all hearings or proceedings regarding the written accusation. The ordinance shall also include a procedure for making application for an appeal, specifications on the period of time within which such application shall be made, and provisions on the manner in which the appeals hearing shall be conducted. Both the police officer and the individual imposing the action or their respective attorneys or representatives shall have the right at the hearing to be heard and to present evidence to the village board of trustees for its consideration. Not later than thirty days following the adjournment of the meeting at which the hearing was held, the village board of trustees shall vote to uphold, reverse, or modify the action. The failure of the village board of trustees to act within thirty days or the failure of a majority of the elected board members to vote to reverse or modify the action shall be construed as a vote to uphold the action. The decision of the village board of trustees shall be based upon its determination that, under the facts and evidence presented at the hearing, the action was necessary for the proper management and the effective operation of the police department in the performance of its duties under the statutes of the State of Nebraska. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders.

(c) This subsection does not apply to a police officer during his or her probationary period.

(3) The village board of trustees shall also appoint a board of health consisting of three members: The chairperson of the village board of trustees, who shall be chairperson, and two other members. One member shall be a physician or health care provider, if one can be found who is willing to serve. Such physician or health care provider, if appointed, shall be the medical advisor to the board of health. If the village board of trustees has appointed a chief of police, the chief of police may be appointed to the board of health and

serve as secretary and quarantine officer. A majority of the board of health shall constitute a quorum and shall enact rules and regulations, which shall have the force and effect of law, to safeguard the health of the people of such village and prevent nuisances and unsanitary conditions. The board of health shall enforce such rules and regulations and provide fines and punishments for violations.

(4) The village clerk, treasurer, attorney, engineer, overseer of the streets, members of the board of health, and other appointed officers, except regular police officers, shall hold office for one year unless removed by the chairperson of the village board of trustees with the advice and consent of the village board of trustees.

**Source:** Laws 1879, § 47, p. 204; Laws 1885, c. 18, § 1, p. 158; Laws 1895, c. 15, § 1, p. 110; Laws 1911, c. 20, § 1, p. 137; R.S.1913, § 5058; Laws 1919, c. 165, § 1, p. 369; C.S.1922, § 4230; C.S. 1929, § 17-208; R.S.1943, § 17-208; Laws 1995, LB 346, § 2; Laws 1996, LB 1162, § 2; Laws 2009, LB158, § 2; Laws 2011, LB308, § 2; Laws 2017, LB133, § 70.  
Effective date August 24, 2017.

#### **17-209 Appointed officers and employees; compensation; fixed by ordinance.**

The appointive officials and other employees of the village shall receive such compensation as the chairperson and village board of trustees shall designate by ordinance; and the annual salary of the chairperson and other members of the village board of trustees shall be fixed by ordinance.

**Source:** Laws 1879, § 48, p. 204; Laws 1885, c. 18, § 1, p. 159; R.S.1913, § 5059; C.S.1922, § 4231; C.S.1929, § 17-209; Laws 1935, c. 36, § 4, p. 149; Laws 1937, c. 32, § 1, p. 157; C.S.Supp.,1941, § 17-209; Laws 1943, c. 30, § 3, p. 140; R.S.1943, § 17-209; Laws 1945, c. 26, § 1, p. 137; Laws 1947, c. 31, § 2(1), p. 141; Laws 1949, c. 21, § 2, p. 92; Laws 1961, c. 49, § 1, p. 190; Laws 1969, c. 89, § 2, p. 452; Laws 2017, LB133, § 71.  
Effective date August 24, 2017.

#### **17-209.02 Officers and employees; merger of offices; salaries.**

The village board of trustees may by ordinance combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except trustee, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time, except that trustees may perform and upon village board of trustees approval receive compensation for seasonal or emergency work subject to sections 49-14,103.01 to 49-14,103.06. The offices or employments so merged and combined shall always be construed to be separate and the effect of the combination or merger shall be limited to a consolidation of official duties only. The salary or compensation of the officer or employee holding the merged and combined offices or employments or offices and employments shall not be in excess of the maximum amount provided by law for the salary or compensation of the office, offices, employ-

ment, or employments so merged and combined. For purposes of this section, volunteer firefighters and ambulance drivers shall not be considered officers.

**Source:** Laws 1945, c. 25, § 2, p. 135; R.S.Supp.,1945, § 17-209.01; Laws 1972, LB 1032, § 106; Laws 1984, LB 368, § 3; Laws 1984, LB 682, § 8; Laws 1986, LB 548, § 9; Laws 1990, LB 756, § 3; Laws 2017, LB133, § 72.

Effective date August 24, 2017.

**17-210 Board of trustees; ordinances; publication; chairperson pro tempore.**

The chairperson of the village board of trustees shall cause the ordinances of the village to be printed and published for the information of the inhabitants and cause such ordinances to be carried into effect. In the absence of the chairperson from any meeting of the village board of trustees, the village board of trustees shall have power to appoint a chairperson pro tempore, who shall exercise and have the powers and perform the same duties as the regular chairperson.

**Source:** Laws 1879, § 49, p. 204; R.S.1913, § 5060; C.S.1922, § 4232; C.S.1929, § 17-210; R.S.1943, § 17-210; Laws 2017, LB133, § 73.

Effective date August 24, 2017.

**17-211 Elections; notice.**

The village clerk shall give public notice of the time and place of holding each village election, the notice to be given not less than ten nor more than twenty days previous to the election in a legal newspaper in or of general circulation in the village.

**Source:** Laws 1879, § 50, p. 205; R.S.1913, § 5061; C.S.1922, § 4233; C.S.1929, § 17-211; R.S.1943, § 17-211; Laws 1959, c. 60, § 54, p. 272; Laws 2017, LB133, § 74.

Effective date August 24, 2017.

**17-212 Elections; officers of election; vacancies; how filled.**

If, on any day appointed for holding any village election, any of the judges or clerks of election shall fail to attend, the electors present may fill such vacancies from among the qualified electors present.

**Source:** Laws 1879, § 51, p. 205; R.S.1913, § 5062; C.S.1922, § 4234; C.S.1929, § 17-212; R.S.1943, § 17-212; Laws 2017, LB133, § 75.

Effective date August 24, 2017.

**17-213 Village chief of police; powers and duties.**

The village chief of police shall have power to make or order an arrest with proper process for any offense against the laws of the state or ordinances of the village and bring the offender to trial before the proper officer and to arrest without process in all cases where any such offense shall be committed or attempted to be committed in his or her presence.

**Source:** Laws 1885, c. 18, § 1, p. 160; R.S.1913, § 5063; C.S.1922, § 4235; C.S.1929, § 17-213; R.S.1943, § 17-213; Laws 1972, LB 1032, § 106; Laws 2017, LB133, § 76.

Effective date August 24, 2017.

## Cross References

Ticket quota requirements, prohibited, see section 48-235.

**17-213.01 Village engineer; powers and duties.**

(1) The village engineer, when ordered to do so by the village board of trustees, shall make surveys, estimates, and calculations necessary to be made for the establishment and maintenance of public works by the village.

(2) The village board of trustees may, in lieu of appointing a village engineer, employ a special engineer to perform the duties that would otherwise be performed by the village engineer. Any work executed by such special engineer shall have the same validity and serve in all respects as though executed by the village engineer.

**Source:** Laws 2017, LB133, § 77.  
Effective date August 24, 2017.

**17-214 Village overseer of streets; power and duties.**

The village overseer of streets shall, subject to the order of the village board of trustees, have general charge, direction, and control of all works on streets, sidewalks, culverts, and bridges of the village and shall perform such other duties as the village board of trustees may direct.

**Source:** Laws 1885, c. 18, § 1, p. 160; R.S.1913, § 5064; C.S.1922, § 4236; C.S.1929, § 17-214; R.S.1943, § 17-214; Laws 2017, LB133, § 78.  
Effective date August 24, 2017.

**17-215 Village; dissolution; how effected.**

Any village incorporated under the laws of this state shall abolish its incorporation whenever a majority of the registered voters of the village, voting on the question of such abolishment, shall so decide in the manner provided in sections 17-215 to 17-219.03.

**Source:** Laws 1885, c. 17, § 1, p. 156; R.S.1913, § 5065; C.S.1922, § 4237; C.S.1929, § 17-215; R.S.1943, § 17-215; Laws 1998, LB 1346, § 2; Laws 2017, LB133, § 79.  
Effective date August 24, 2017.

**17-216 Village; dissolution; petition or resolution; election.**

(1) Whenever a petition for submission of the question of the abolishment of incorporation to the registered voters of any village, signed by not less than one-third of the registered voters of the village, is filed in the office of the county clerk or election commissioner of the county in which such village is situated, the county clerk or election commissioner shall cause such question to be submitted to the registered voters of the village as provided in this section and give notice thereof in the general notice of the election at which the question will be submitted.

(2) Whenever two-thirds of the members of the village board of trustees, by resolution following a public hearing, vote to submit the question of the abolishment of the incorporation of the village, the resolution shall be filed in the office of the county clerk or election commissioner of the county in which such village is situated and the county clerk or election commissioner shall

cause such question to be submitted to the registered voters of the village as provided in this section and give notice thereof in the general notice of the election at which the question will be submitted.

(3) If a petition or resolution is filed with the county clerk or election commissioner, the county clerk or election commissioner shall cause such question to be submitted to the registered voters of the village at the next primary or general election which is scheduled to be held more than seventy days after the date upon which the petition or resolution is filed. If the petition or resolution calls for a vote on the question at a special election to be called for that purpose, the county clerk or election commissioner shall cause a special election to be called for the purpose of placing the question before the registered voters and the election shall be called not sooner than sixty days nor later than seventy days after the date of the filing of the petition or resolution. If a petition is filed at any time other than within one hundred eighty days prior to a primary or general election and the petition does not call for the question to be considered at a special election, the village board of trustees may, by majority vote, call for the county clerk or election commissioner to cause the matter to be placed upon the ballot at a special election on a date certain specified by the board, except that such date shall not be sooner than sixty days after the date upon which the petition was filed.

(4) If the question of abolishment of incorporation is submitted to the voters and such question receives a favorable vote by a majority of those voting on the issue, the village board of trustees shall file with the Secretary of State a certified statement showing the total votes for and against such measure.

**Source:** Laws 1885, c. 17, § 2, p. 157; R.S.1913, § 5066; C.S.1922, § 4238; C.S.1929, § 17-216; R.S.1943, § 17-216; Laws 1973, LB 559, § 5; Laws 1998, LB 1346, § 3; Laws 2017, LB133, § 80.  
Effective date August 24, 2017.

**17-217 Village; dissolution; election; form of ballot.**

The form of the ballot for the question of the abolishment of incorporation of a village shall be, respectively, For abolishment of incorporation, and Against abolishment of incorporation, and the same shall be printed upon a separate ballot and shall be counted and canvassed in the same manner as other ballots voted at the election.

**Source:** Laws 1885, c. 17, § 3, p. 157; R.S.1913, § 5067; C.S.1922, § 4239; C.S.1929, § 17-217; R.S.1943, § 17-217; Laws 1973, LB 559, § 6; Laws 2017, LB133, § 81.  
Effective date August 24, 2017.

**17-218 Village; dissolution; when effective.**

(1) If a majority of the registered voters of a village voting on the question vote in favor of the abolishment of the incorporation of a village, then, from and after the effective date of the abolishment of the incorporation as determined by the county board as provided in subsection (2) of this section, the incorporation of the village shall cease and be abolished, and the area formerly encompassed within the boundaries of the village shall thereafter be governed by county commissioners as provided by law for unincorporated areas within the county. Upon such date, the terms of office of all elected and appointed officers and employees of the village shall end.

(2) Within fifty days after the date of the election at which the registered voters of the village approve the abolishment of the village's incorporation, the county board of the county within which the village is located shall, by resolution, specify the month, day, and year upon which the abolishment of the incorporation becomes effective. The effective date shall not be later than (a) six calendar months following the date of the election or (b) if there are liabilities of the village which cannot be retired except by means of a continuing property tax levy by the village, the date such liabilities can be paid, whichever is later. The county clerk shall transmit a copy of the resolution to the Secretary of State.

**Source:** Laws 1885, c. 17, § 4, p. 157; R.S.1913, § 5068; C.S.1922, § 4240; C.S.1929, § 17-218; R.S.1943, § 17-218; Laws 1998, LB 1346, § 4; Laws 2017, LB133, § 82.  
Effective date August 24, 2017.

**17-219 Village; dissolution; village property, records, and funds; disposition.**

Upon the effective date of the abolishment of incorporation of a village, all property and records belonging to the village shall be transferred to the county board of the county in which the village is located. All funds of the village not otherwise disposed of shall be transferred to the county treasurer to be paid out by order of the county board as it sees fit.

**Source:** Laws 1885, c. 17, § 5, p. 157; R.S.1913, § 5069; C.S.1922, § 4241; C.S.1929, § 17-219; R.S.1943, § 17-219; Laws 1998, LB 1346, § 5; Laws 2017, LB133, § 83.  
Effective date August 24, 2017.

**17-219.01 Village; dissolution; property; sale by county board; when authorized.**

Notwithstanding any more general law respecting revenue, the county board in any county in this state in which the incorporation of any village has been abolished according to law shall advertise and sell all corporate property of the village for which the county itself has no use or which remains unsold or undisposed of after the expiration of six months from the effective date of the abolishment of the incorporation of such village as provided by the county board for liquidation of any liabilities of the village. After the effective date of the abolishment of the incorporation of the village, the county board shall treat all real estate listed and described in the original plat of such village upon which the owner of such real estate has failed and neglected to pay the taxes on such real estate as if such taxes were originally levied by the county and, notwithstanding any other provision of law, the taxes shall be deemed to have been levied by the county as of the date of the original levy by the village and due and owing as provided by law to the county.

**Source:** Laws 1935, c. 158, § 1, p. 581; C.S.Supp.,1941, § 17-227; R.S. 1943, § 17-219.01; R.S.1943, (1987), § 17-226; Laws 1998, LB 1346, § 6; Laws 2017, LB133, § 84.  
Effective date August 24, 2017.

**17-219.02 Village; dissolution; property; sale; notice.**

The county treasurer shall, before selling any property under section 17-219.01, give notice of the sale of such property in the same manner as notice

is given when lands are sold under execution by the county sheriff, and the sale shall likewise be conducted in the same manner as execution sales.

**Source:** Laws 1935, c. 158, § 2, p. 581; C.S.Supp.,1941, § 17-228; R.S. 1943, § 17-219.02; R.S.1943, (1987), § 17-227; Laws 1998, LB 1346, § 7; Laws 2017, LB133, § 85.  
Effective date August 24, 2017.

**17-219.03 Village; dissolution; board of trustees; county board; duties.**

(1) On and after the date of a vote by a majority of the registered voters of a village voting on the question in favor of the abolishment of the incorporation of a village, the village board of trustees shall not expend any funds of the village, liquidate any village assets, whether such assets are real or personal property, or otherwise encumber or exercise any authority over the property or funds of the village without the prior approval of the county board of the county within which the village is located.

(2) Within ten days after a vote by a majority of the registered voters of a village voting on the question in favor of the abolishment of the incorporation of a village, the village board of trustees shall meet and approve a resolution setting out with particularity all of the assets and liabilities of the village, including a full and complete inventory of all property, real and personal, owned by the village. The resolution shall be transmitted to the county clerk of the county within which the village is located, and the county clerk shall provide copies to the members of the county board.

(3) If the liabilities of the village exceed the value of all the assets of the village, the county board shall, within twenty days after the receipt of the resolution by the county clerk, schedule a joint meeting between the village board of trustees and the county board to review the resolution and discuss how to liquidate the liabilities with the village board of trustees.

(4) Within thirty days after the date upon which the joint meeting is held pursuant to subsection (3) of this section, the county board shall adopt a plan for the liquidation of village assets to retire the liabilities of the village.

**Source:** Laws 1935, c. 158, § 3, p. 581; C.S.Supp.,1941, § 17-229; R.S. 1943, § 17-219.03; R.S.1943, (1987), § 17-228; Laws 1998, LB 1346, § 8; Laws 2017, LB133, § 86.  
Effective date August 24, 2017.

**17-220 Village situated in more than one county; how organized.**

A majority of the inhabitants of any village situated in two or more counties may present a petition to the county board of any county in which any part of such village is situated, requesting that they may be incorporated as a village; and such county board shall act upon the petition the same as if the village were situated wholly within the county where the petition was presented. If the county board shall declare such village incorporated, the village shall thereafter be governed by the provisions of the statutes of this state applicable to the government of villages. The county clerk of such county shall immediately certify the proceedings relating to the incorporation of such village to the county board of each other county in which any part of such village is situated,



and each county board to which such proceedings shall be certified shall enter such proceedings upon its records.

**Source:** Laws 1893, c. 9, § 1, p. 138; R.S.1913, § 5069; C.S.1922, § 4242; C.S.1929, § 17-220; R.S.1943, § 17-220; Laws 2017, LB133, § 87.  
Effective date August 24, 2017.

**17-222 Village situated in more than one county; jails.**

Any village situated in two or more counties may use the jails of any and all counties in which any part of such village is situated.

**Source:** Laws 1893, c. 9, § 4, p. 139; R.S.1913, § 5072; C.S.1922, § 4244; C.S.1929, § 17-222; R.S.1943, § 17-222; Laws 2017, LB133, § 88.  
Effective date August 24, 2017.

**17-223 Village situated in more than one county; tax; how certified.**

Taxes levied for village purposes, in villages situated in two or more counties, shall be certified to the county clerk of each county in which any part of such village is situated, and such county clerks shall place such certifications on the proper tax list.

**Source:** Laws 1893, c. 9, § 5, p. 139; R.S.1913, § 5073; C.S.1922, § 4245; C.S.1929, § 17-223; R.S.1943, § 17-223; Laws 2017, LB133, § 89.  
Effective date August 24, 2017.

**17-224 Village situated in more than one county; legal notices; publication.**

All notices and other publications, required by law to be published in any county in which any part of a village is situated, may be published in any legal newspaper in or of general circulation in such village, and such publication shall have the same force and effect as it would have if published in every county in which any part of such village is situated.

**Source:** Laws 1893, c. 9, § 7, p. 140; R.S.1913, § 5074; C.S.1922, § 4246; C.S.1929, § 17-224; R.S.1943, § 17-224; Laws 2017, LB133, § 90.  
Effective date August 24, 2017.

**17-225 Railroads; blocking crossings; penalty.**

It shall be unlawful for any railroad company or for any of its officers, agents, or employees to obstruct with car or cars, with engine or engines, or with any other rolling stock, for more than ten minutes at a time, any public highway, street, or alley in any unincorporated village in the State of Nebraska. Any corporation, person, firm, or individual violating any provision of this section shall, upon conviction thereof, be fined in any sum not less than ten dollars nor more than one hundred dollars.

**Source:** Laws 1907, c. 109, § 1, p. 384; Laws 1907, c. 109, § 2, p. 384; R.S.1913, § 5075; C.S.1922, § 4247; C.S.1929, § 17-225; R.S. 1943, § 17-225; Laws 2017, LB133, § 91.  
Effective date August 24, 2017.

**17-229 Street improvement program; authorization; tax levy.**

If the village board of trustees determines by a three-fourths vote the necessity of initiating a street improvement program within the village, which improvements are in the nature of a general benefit to the whole community and not of special benefit to adjoining or to abutting property and which consists of graveling, base stabilization, oiling, or other improvements to the streets, but which improvements do not consist of curb and gutter or asphalt or concrete pavings, the village board of trustees may, by ordinance, provide for the levy and collection of a special tax not exceeding seventeen and five-tenths cents on each one hundred dollars on the taxable value of all the taxable property in the village for a period not to exceed five years to create a fund for the payment of such improvements.

**Source:** Laws 1963, c. 85, § 1, p. 293; Laws 1979, LB 187, § 46; Laws 1992, LB 719A, § 49; Laws 2017, LB133, § 92.  
Effective date August 24, 2017.

**17-230 Street improvement program; tax levy limitation.**

Any levy pursuant to section 17-229 shall not be considered within the limitation on the village for the levy of taxes as contained in section 17-702.

**Source:** Laws 1963, c. 85, § 2, p. 293; Laws 1965, c. 69, § 2, p. 290; Laws 1979, LB 187, § 47; Laws 2017, LB133, § 93.  
Effective date August 24, 2017.

**17-231 Street improvement program; construction of improvements; issuance of warrants; interest; unused funds transferred to general fund.**

In order to construct the improvements as outlined in section 17-229, the village board of trustees may proceed from time to time to make such improvements costing not exceeding eighty-five percent of the amount of taxes to be collected under the special tax levy. In order to allow the construction of the contemplated improvements immediately, the village board of trustees may issue warrants from time to time in the aggregate amount of eighty-five percent of the estimated taxes to be collected over the period of years provided for the levy, the amount of such warrants authorized to be issued to be based upon the amount of revenue to be raised by the tax to be levied and the taxable valuation of the taxable property in the village at the time the determination of necessity is made by ordinance multiplied by the number of years the tax has to run. Such warrants shall not bear interest in excess of six percent per annum, may be issued in such denominations as the village board of trustees may determine, and shall be paid from the collection of the special tax levy. Any unpaid amount of the levy after the payment of any such warrants in full, including both principal and interest, shall be transferred to the general fund.

**Source:** Laws 1963, c. 85, § 3, p. 293; Laws 1979, LB 187, § 48; Laws 1992, LB 719A, § 50; Laws 2017, LB133, § 94.  
Effective date August 24, 2017.

ARTICLE 3

CHANGES IN POPULATION OR CLASS

(a) CITIES OF THE FIRST CLASS

- Section
- 17-301. City of the first class; reorganization as city of the second class; procedure; mayor, city council, and Secretary of State; duties.
- 17-302. Government pending reorganization.
- 17-303. Wards; establish.
- 17-304. Reorganization; council; members; qualifications.

(b) CITIES OF THE SECOND CLASS

- 17-306.01. Village reorganized from city of second class; discontinuation; reorganize as city of the second class; petition; election.
- 17-308. Reorganization; transfer of property; how effected.
- 17-309. Reorganization; existing ordinances; effect; debts; taxes.
- 17-310. Decrease in population; remain city of the second class.

(c) VILLAGES

- 17-311. Village; increase in population; reorganization as city of the second class.
- 17-312. Village; retention of village government; petition; election.
- 17-313. Village; organize as city of second class; petition; election.

(a) CITIES OF THE FIRST CLASS

**17-301 City of the first class; reorganization as city of the second class; procedure; mayor, city council, and Secretary of State; duties.**

(1) This section applies to cities of the first class whose population is less than five thousand inhabitants but more than eight hundred inhabitants as determined by the federal decennial census conducted in the year 2010 or any subsequent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

(2)(a) If a city of the first class has a population of less than five thousand inhabitants but not less than four thousand inhabitants, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the mayor of the city shall certify such fact to the Secretary of State. If the mayor and city council determine that it is in the best interests of such city to become a city of the second class, the mayor and city council shall adopt an ordinance to that effect and shall notify the Secretary of State and notice and a copy of such ordinance shall accompany the certification. If the Secretary of State receives such notification, he or she shall declare such city to be a city of the second class. If the mayor and city council determine that it is in the best interests of such city to remain a city of the first class, they shall submit to the Secretary of State, within nine years after the certification is required to be submitted pursuant to this subdivision, an explanation of the city's plan to increase the city's population.

(b) If a city of the first class has a population of less than five thousand inhabitants but not less than four thousand inhabitants, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census immediately following the census or revised certified count referred to in subdivision (a) of this subsection, the mayor of the city shall certify such fact to the Secretary of State. If the mayor and city council determine that it is in the best interests of such city to become a city of the second class, the mayor and city council shall adopt an ordinance

to that effect and shall notify the Secretary of State and notice and a copy of such ordinance shall accompany the certification. If the Secretary of State receives such notification, he or she shall declare such city to be a city of the second class.

(c) If a city of the first class has a population of less than five thousand inhabitants but not less than four thousand inhabitants, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census immediately following the census or revised certified count referred to in subdivision (b) of this subsection, the mayor of the city shall certify such fact to the Secretary of State. After receipt of such certification, the Secretary of State shall declare such city to be a city of the second class.

(3) If a city of the first class has a population of less than four thousand inhabitants but more than eight hundred inhabitants, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the mayor of the city shall certify such fact to the Secretary of State. After receipt of such certification, the Secretary of State shall declare such city to be a city of the second class.

(4) Beginning on the date upon which a city becomes a city of the second class pursuant to section 17-305, such city shall be governed by the laws of this state applicable to cities of the second class.

**Source:** Laws 1933, c. 112, § 1, p. 452; C.S.Supp.,1941, § 17-162; R.S. 1943, § 17-301; Laws 1984, LB 1119, § 3; Laws 2002, LB 729, § 5; Laws 2010, LB919, § 1; Laws 2017, LB113, § 14; Laws 2017, LB133, § 95.  
Effective date August 24, 2017.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB113, section 14, with LB133, section 95, to reflect all amendments.

### **17-302 Government pending reorganization.**

The government of a city shall continue, as organized at the date of the declaration of the Secretary of State under section 17-301, until the reorganization of such city under section 17-305.

**Source:** Laws 1933, c. 112, § 2, p. 453; C.S.Supp.,1941, § 17-163; R.S. 1943, § 17-302; Laws 2002, LB 729, § 6; Laws 2017, LB133, § 96.  
Effective date August 24, 2017.

### **17-303 Wards; establish.**

The mayor and city council shall, within ninety days after the declaration of the Secretary of State under section 17-301, divide the city into not less than two nor more than six wards as may be provided by ordinance. Such wards shall contain, as nearly as practicable, an equal area and an equal number of legal voters. The division and boundaries of such wards, as defined by ordinance, shall take effect on the first day of the first succeeding municipal year following the next general city election after such reorganization. Any city council member whose term continues, by reason of his or her prior election under the statutes governing cities of the first class, through another year or years beyond the date of the reorganization as a city of the second class shall continue to hold his or her office as city council member from the ward in

which he or she is a resident as if elected for the same term under the statutes governing cities of the second class.

**Source:** Laws 1933, c. 112, § 3, p. 453; C.S.Supp.,1941, § 17-164; R.S. 1943, § 17-303; Laws 2002, LB 729, § 7; Laws 2017, LB133, § 97.  
Effective date August 24, 2017.

**17-304 Reorganization; council; members; qualifications.**

After the terms of members of the city council in office at the time of reorganization as a city of the second class shall have expired, the city council shall consist of not less than four nor more than twelve citizens of such city, who shall be qualified electors under the Constitution and laws of the State of Nebraska.

**Source:** Laws 1933, c. 112, § 4, p. 454; C.S.Supp.,1941, § 17-165; R.S. 1943, § 17-304; Laws 1973, LB 559, § 7; Laws 2017, LB133, § 98.  
Effective date August 24, 2017.

(b) CITIES OF THE SECOND CLASS

**17-306.01 Village reorganized from city of second class; discontinuation; reorganize as city of the second class; petition; election.**

(1) The registered voters of a village which was reorganized under section 17-306 from a city of the second class to a village may vote to discontinue organization as a village and reorganize as a city of the second class under this section if the population exceeds eight hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census. The issue may be placed before the voters by a resolution adopted by the village board of trustees or by petition signed by one-fourth of the registered voters of the village.

(2) The petitions under subsection (1) of this section shall conform to section 32-628. The Secretary of State shall design the form to be used for the petitions. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. The village board of trustees shall submit the petitions to the election commissioner or county clerk for signature verification pursuant to section 32-631. The required number of signatures shall be one-fourth of the number of voters registered in the village at the last statewide general election. The election commissioner or county clerk shall notify the village board of trustees within thirty days after receiving the petitions from the village board of trustees whether the required number of signatures has been gathered. The village shall reimburse the county for any costs incurred by the election commissioner or county clerk.

(3) If the village board of trustees determines that the petitions are in proper form and signed by the necessary number of registered voters or after adoption of the resolution by the village board of trustees, the village board of trustees shall submit the question to the voters of whether to organize as a city of the second class at a special election pursuant to section 32-559 or at the same time as a local or statewide primary or general election held in the village. The form of the ballot at such election shall be For reorganization of the Village of

..... as a city of the second class and Against reorganization of the Village of ..... as a city of the second class.

(4) If the majority of the votes cast are for reorganization as a city of the second class, the village board of trustees shall certify such fact to the Secretary of State who, upon the filing of such a certificate, shall by proclamation declare such village to have become a city of the second class. After such proclamation, such village shall become a city of the second class and such city shall be governed under the laws of this state applicable to cities of the second class. The government of such city shall continue as organized at the date of such proclamation until the reorganization as a city of the second class.

(5) Upon such proclamation, the village board of trustees shall call a special election for the purpose of electing new members of the city council to be held not more than eight months after the proclamation is issued. At the initial election of the mayor and city council members, the names of the candidates receiving the greatest number of votes at the primary election if one is held shall be placed on the general election ballot. One-half or the bare majority of the candidates for city council in each precinct or ward or at-large candidates, as the case may be, receiving the greatest number of votes at the general election, shall be elected to terms of the longest duration, and those receiving the next greatest number of votes shall be elected to the remaining term or terms. Thereafter all members of the city council shall be nominated at the statewide primary election and elected at the statewide general election for four-year terms as provided in section 32-533. The members of the village board of trustees shall hold office only until the newly elected mayor and city council members assume office.

(6) All ordinances, bylaws, acts, rules, regulations, obligations, and proclamations existing and in force in or with respect to any village at the time of its incorporation as a city of the second class shall remain in full force and effect after such incorporation as a city of the second class until repealed or modified by such city within one year after the date of the filing of the certificate pursuant to subsection (4) of this section.

**Source:** Laws 2014, LB702, § 4; Laws 2017, LB113, § 15; Laws 2017, LB133, § 99.  
Effective date August 24, 2017.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB113, section 15, with LB133, section 99, to reflect all amendments.

**17-308 Reorganization; transfer of property; how effected.**

If a city of the second class reorganizes as a village pursuant to section 17-306, the village board of trustees shall, at the expiration of sixty days from such election, enter upon the duties of their offices; and all books, papers, records, money, and property of such city shall be delivered over to the village board of trustees; and the authority of the city council and all city officers shall cease from and after the taking effect of village government in such city.

**Source:** Laws 1879, § 54, p. 206; R.S.1913, § 5078; C.S.1922, § 4250; C.S.1929, § 17-302; R.S.1943, § 17-308; Laws 2017, LB133, § 100.  
Effective date August 24, 2017.

**17-309 Reorganization; existing ordinances; effect; debts; taxes.**

Upon reorganization of a city of the second class as a village pursuant to section 17-306, all ordinances of the city shall remain and be in full force in the village until amended or repealed by the village board of trustees, and the village board of trustees shall provide for the payment of indebtedness of the city and levy necessary taxes for such indebtedness as if the indebtedness had been incurred by the village.

**Source:** Laws 1879, § 55, p. 206; R.S.1913, § 5079; C.S.1922, § 4251; C.S.1929, § 17-303; R.S.1943, § 17-309; Laws 2017, LB133, § 101.  
Effective date August 24, 2017.

**17-310 Decrease in population; remain city of the second class.**

Whenever any city of the second class decreases in population until it has a population of less than eight hundred inhabitants and more than one hundred inhabitants, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the mayor and city council may decide by ordinance to remain a city of the second class. If the mayor and city council enact such an ordinance, the mayor shall certify such fact to the Secretary of State who, upon the filing of such a certificate, shall by proclamation declare such city to remain a city of the second class. Such city shall continue to be governed by laws of this state applicable to cities of the second class.

**Source:** Laws 1984, LB 1119, § 5; Laws 2017, LB113, § 16; Laws 2017, LB133, § 102.  
Effective date August 24, 2017.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB113, section 16, with LB133, section 102, to reflect all amendments.

(c) VILLAGES

**17-311 Village; increase in population; reorganization as city of the second class.**

(1) Except as provided in section 17-312, whenever any village increases in population until it has a population of more than eight hundred inhabitants but less than five thousand inhabitants, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the village board of trustees shall certify such fact to the Secretary of State who, upon the filing of such a certificate, shall by proclamation declare such village to have become a city of the second class. After such proclamation, such city shall be governed by the laws of this state applicable to cities of the second class. The government of such city shall continue as organized at the date of such proclamation until the reorganization as a city of the second class.

(2) If any village becomes a city of the second class, the village board of trustees shall call a special election for the purpose of electing the mayor and city council members to be held not more than eight months after the proclamation is issued. At the initial election of the mayor and city council members, the names of the candidates receiving the greatest number of votes at the primary election if one is held shall be placed on the general election ballot. One-half or the bare majority of the candidates for city council in each precinct or ward or at-large candidates, as the case may be, receiving the greatest

number of votes at the general election, shall be elected to terms of the longest duration, and those receiving the next greatest number of votes shall be elected to the remaining term or terms. The members of the village board of trustees shall hold office only until the newly elected mayor and city council members assume office.

(3) All ordinances, bylaws, acts, rules, regulations, obligations, and proclamations existing and in force in or with respect to any village at the time of its incorporation as a city of the second class shall remain in full force and effect after such incorporation as a city of the second class until repealed or modified by such city within one year after the date of the filing of the certificate pursuant to subsection (1) of this section.

**Source:** Laws 1984, LB 1119, § 6; Laws 1988, LB 796, § 2; Laws 1994, LB 76, § 495; Laws 2017, LB113, § 17; Laws 2017, LB133, § 103.

Effective date August 24, 2017.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB113, section 17, with LB133, section 103, to reflect all amendments.

#### **17-312 Village; retention of village government; petition; election.**

(1) Whenever any village attains a population exceeding eight hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the registered voters of the village may vote to retain a village form of government. The issue may be placed before the voters by a resolution adopted by the village board of trustees or by petition signed by one-fourth of the registered voters of the village.

(2) The petitions under subsection (1) of this section shall conform to section 32-628. The Secretary of State shall design the form to be used for the petitions. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. The village board of trustees shall submit the petitions to the election commissioner or county clerk for signature verification pursuant to section 32-631. The required number of signatures shall be one-fourth of the number of voters registered in the village at the last statewide general election. The election commissioner or county clerk shall notify the village board of trustees within thirty days after receiving the petitions from the village board of trustees whether the required number of signatures has been gathered. The village shall reimburse the county for any costs incurred by the election commissioner or county clerk.

(3) If the village board of trustees determines that the petitions are in proper form and signed by the necessary number of registered voters or after adoption of the resolution by the village board of trustees, the village board of trustees shall submit the question to the voters of whether to retain the village form of government at a special election pursuant to section 32-559 or at the same time as a local or statewide primary or general election held in the village. The form of the ballot at such election shall be For retention of village government and Against retention of village government. If the majority of the votes cast are for retention of village government, then such village shall remain a village and be governed under the laws of this state applicable to villages unless at some future election such village votes to reorganize as a city of the second class in the manner provided in section 17-313.



(4) If the question to retain a village form of government is submitted at a special election, such election shall be held not later than October 15 of an odd-numbered year. If the question is rejected, city of the second class officials shall be elected at the next regularly scheduled election.

(5) If the question to retain a village form of government is submitted at a regularly scheduled election, no village trustees shall be elected at such election, but village trustees whose terms are to expire following such election shall hold office until either their successors or a mayor and city council members take office as follows:

(a) If the question is rejected, the village board of trustees shall call a special election, to be held not more than eight months after the election at which the question was rejected, for the purpose of electing a mayor and city council members under the provisions of law relating to cities of the second class. The terms of office for such officials shall be established pursuant to section 17-311. The members of the village board of trustees shall hold office only until the newly elected mayor and city council members assume office; and

(b) If the question is approved, the village board of trustees shall call a special election, to be held not more than eight months after the election at which the question was approved, for the purpose of electing successors to those members of the village board of trustees who held office beyond the normal expiration of their terms. Such special election shall be conducted under the provisions of law relating to villages. Persons so elected shall take office as soon after the completion of the canvass of the votes as is practicable, and their terms of office shall be as if the holdovers had not occurred.

**Source:** Laws 1909, c. 21, § 1, p. 190; R.S.1913, § 5007; C.S.1922, § 4249; C.S.1929, § 17-301; R.S.1943, § 17-307; Laws 1969, c. 91, § 2, p. 455; Laws 1971, LB 62, § 3; Laws 1972, LB 661, § 4; Laws 1988, LB 796, § 1; R.S.Supp.,1990, § 17-307; Laws 1994, LB 76, § 496; Laws 2014, LB702, § 5; Laws 2017, LB113, § 18; Laws 2017, LB133, § 104.

Effective date August 24, 2017.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB113, section 18, with LB133, section 104, to reflect all amendments.

### **17-313 Village; organize as city of second class; petition; election.**

(1) The registered voters of a village may vote to discontinue organization as a village and organize as a city of the second class under this section if the population of the village exceeds eight hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census and the prior vote pursuant to section 17-312 was in favor of retaining the village form of government. The issue may be placed before the voters by a resolution adopted by the village board of trustees or by petition signed by one-fourth of the registered voters of the village.

(2) The petitions under subsection (1) of this section shall conform to section 32-628. The Secretary of State shall design the form to be used for the petitions. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. The village board of trustees shall submit the petitions to the election commissioner or county clerk for signature verification pursuant to section 32-631. The required number of signatures shall be one-

fourth of the number of voters registered in the village at the last statewide general election. The election commissioner or county clerk shall notify the village board of trustees within thirty days after receiving the petitions from the village board of trustees whether the required number of signatures has been gathered. The village shall reimburse the county for any costs incurred by the election commissioner or county clerk.

(3) If the village board of trustees determines that the petitions are in proper form and signed by the necessary number of registered voters or after adoption of the resolution by the village board of trustees, the village board of trustees shall submit the question to the voters of whether to organize as a city of the second class at a special election pursuant to section 32-559 or at the same time as a local or statewide primary or general election held in the village. The form of the ballot at such election shall be For reorganization of the Village of . . . . . as a city of the second class and Against reorganization of the Village of . . . . . as a city of the second class.

(4) If the majority of the votes cast are for reorganization as a city of the second class, the village board of trustees shall certify such fact to the Secretary of State who, upon the filing of such a certificate, shall by proclamation declare such village to have become a city of the second class. After such proclamation, such village is a city of the second class, and such city shall be governed under the laws of this state applicable to cities of the second class. The government of such city shall continue as organized at the date of such proclamation until the reorganization as a city of the second class.

(5) Upon such proclamation, the village board of trustees shall call a special election for the purpose of electing a mayor and city council members to be held not more than eight months after the proclamation is issued. At the initial election of the mayor and city council members, the names of the candidates receiving the greatest number of votes at the primary election if one is held shall be placed on the general election ballot. One-half or the bare majority of the candidates for city council in each precinct or ward or at-large candidates receiving the greatest number of votes at the general election shall be elected to terms of the longest duration, and those receiving the next greatest number of votes shall be elected to the remaining term or terms. Thereafter all members of the city council shall be nominated at the statewide primary election and elected at the statewide general election for four-year terms as provided in section 32-533. The members of the village board of trustees shall hold office only until the newly elected mayor and city council members assume office.

(6) All ordinances, bylaws, acts, rules, regulations, obligations, and proclamations existing and in force in or with respect to any village at the time of its incorporation as a city of the second class shall remain in full force and effect after such incorporation as a city of the second class until repealed or modified by such city within one year after the date of the filing of the certificate pursuant to subsection (4) of this section.

**Source:** Laws 2014, LB702, § 6; Laws 2017, LB113, § 19; Laws 2017, LB133, § 105.

Effective date August 24, 2017.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB113, section 19, with LB133, section 105, to reflect all amendments.

**ARTICLE 4**  
**CHANGE OF BOUNDARY; ADDITIONS**

(a) CONSOLIDATION

Section	
17-401.	Consolidation; authority.
17-402.	Consolidation; procedure.
17-403.	Consolidation; when effective; existing rights and liabilities preserved.
17-404.	Consolidation; property.

(b) ANNEXATION OF TERRITORY

17-405.	Transferred to section 18-3301.
17-405.01.	Annexation; powers; restrictions.
17-405.02.	Contiguous land, defined.
17-405.03.	Laws, codes, rules, or regulations; effect of annexation.
17-405.04.	Inhabitants of annexed land; benefits; ordinances.
17-405.05.	City or village in two or more counties; annexation by city or village; procedure.
17-406.	Transferred to section 18-3302.
17-407.	Annexation by city or village within county between 100,000 and 250,000 inhabitants; mayor and city council or chairperson and village board of trustees; powers; notice; contents; liability; limitation on action.
17-412.	Transferred to section 18-3303.

(c) DETACHMENT OF TERRITORY WITHIN CITY LIMITS

17-414.	Land within corporate limits; disconnection; procedure.
---------	---

(d) PLATTING

17-415.	Transferred to section 18-3304.
17-416.	Transferred to section 18-3305.
17-417.	Transferred to section 18-3306.
17-418.	Transferred to section 18-3307.
17-419.	Transferred to section 18-3308.
17-420.	Transferred to section 18-3309.
17-421.	Transferred to section 18-3310.
17-422.	Transferred to section 18-3311.
17-423.	Transferred to section 18-3312.
17-424.	Transferred to section 18-3313.
17-425.	Transferred to section 18-3314.
17-426.	Transferred to section 18-3315.

(a) CONSOLIDATION

**17-401 Consolidation; authority.**

Any two or more cities of the second class or villages, lying adjacent to each other, may consolidate and become one city or village, as the case may be, and under the name and with all the powers, obligations, and duties of the city or village whose name shall be assumed and adopted in the proceedings provided in sections 17-402 and 17-403.

**Source:** Laws 1879, § 91, p. 228; R.S.1913, § 5082; C.S.1922, § 4254; C.S.1929, § 17-403; R.S.1943, § 17-401; Laws 2017, LB133, § 106.

Effective date August 24, 2017.

**17-402 Consolidation; procedure.**

When any city or village shall desire to be annexed to another contiguous city or village, the city council or village board of trustees of each city or village

shall appoint three commissioners to arrange and report to such city council or village board of trustees respectively the terms and conditions on which the proposed annexation can be made. If the city council or village board of trustees of each such city or village approves of the terms and conditions of such proposed annexation by ordinance, the city council or village board of trustees of each of such cities or villages shall submit the question of such annexation, upon the terms and conditions so proposed, to the electors of the respective cities or villages. If a majority of the electors of each such city or village vote in favor of such annexation, the city council or village board of trustees of each shall, by ordinance, declare such annexation. A certified copy of the whole proceedings of the city or village shall be filed with the city clerk or village clerk to which the annexation is made.

**Source:** Laws 1879, § 92, p. 228; R.S.1913, § 5083; C.S.1922, § 4255; C.S.1929, § 17-404; R.S.1943, § 17-402; Laws 2017, LB133, § 107.  
Effective date August 24, 2017.

**17-403 Consolidation; when effective; existing rights and liabilities preserved.**

When certified copies of the proceedings for annexation are filed, as contemplated in section 17-402, the annexation shall be deemed complete; and the city or village to which annexation is made shall have the power to pass such ordinances, not inconsistent with law, as will carry into effect the terms of such annexation. After such annexation, the annexed city or village shall be governed as part of the city or village to which annexation is made. Such annexation shall not affect or impair any rights or liabilities then existing for or against either of such cities or villages, but they may be enforced as if no such annexation had taken place.

**Source:** Laws 1879, § 93, p. 228; R.S.1913, § 5084; C.S.1922, § 4256; C.S.1929, § 17-405; R.S.1943, § 17-403; Laws 2017, LB133, § 108.  
Effective date August 24, 2017.

**17-404 Consolidation; property.**

When a city or village is annexed to another pursuant to section 17-402, the property, both real and personal, notes, bonds, obligations, accounts, demands, evidences of debt, rights, choses in action, franchises, books, records, maps, plats, and effects of every nature, of and belonging to the city or village so annexed, shall be the property of and belong to the city or village to which it is annexed.

**Source:** Laws 1879, § 94, p. 229; R.S.1913, § 5085; C.S.1922, § 4257; C.S.1929, § 17-406; R.S.1943, § 17-404; Laws 2017, LB133, § 109.  
Effective date August 24, 2017.

(b) ANNEXATION OF TERRITORY

**17-405 Transferred to section 18-3301.**

**17-405.01 Annexation; powers; restrictions.**

(1) Except as provided in subsection (2) of this section and section 17-407, the mayor and city council of any city of the second class or the chairperson and members of the village board of trustees may by ordinance, except as provided in sections 13-1111 to 13-1118, at any time, include within the corporate limits of such city or village any contiguous or adjacent lands, lots, tracts, streets, or highways as are urban or suburban in character, and in such direction as may be deemed proper. Such grant of power shall not be construed as conferring power to extend the limits of any city of the second class or village over any agricultural lands which are rural in character.

(2) The mayor and city council of any city of the second class or the chairperson and members of the village board of trustees may, by ordinance, annex any lands, lots, tracts, streets, or highways which constitute a redevelopment project area so designated by the city or village or its community redevelopment authority in accordance with the provisions of the Community Development Law and sections 18-2145 to 18-2154 when such annexation is for the purpose of implementing a lawfully adopted redevelopment plan containing a provision dividing ad valorem taxes as provided in subsection (1) of section 18-2147 and which will involve the construction or development of an agricultural processing facility, notwithstanding that such lands, lots, tracts, streets, or highways are not contiguous or adjacent or are not urban or suburban in character. Such annexation shall comply with all other provisions of law relating to annexation generally for cities of the second class and villages. The city or village shall not, in consequence of the annexation under this subsection of any noncontiguous land, exercise the authority granted to it by statute to extend its extraterritorial zoning jurisdiction beyond its corporate boundaries for purposes of planning, zoning, or subdivision development without the agreement of any other city, village, or county currently exercising zoning jurisdiction over the area surrounding the annexed redevelopment project area. The annexation of any noncontiguous land undertaken pursuant to this subsection shall not result in any change in the service area of any electric utility without the express agreement of the electric utility serving the annexed noncontiguous area at the time of annexation, except that at such time following the annexation of the noncontiguous area as the city or village lawfully annexes sufficient intervening territory so as to directly connect the noncontiguous area to the main body of the city or village, such noncontiguous area shall, solely for the purposes of section 70-1008, be treated as if it had been annexed by the city or village on the date upon which the connecting intervening territory had been formally annexed.

(3) For purposes of subsection (2) of this section, agricultural processing facility means a plant or establishment where value is added to agricultural commodities through processing, fabrication, or other means and where eighty percent or more of the direct sales from the facility are to other than the ultimate consumer of the processed commodities. A facility shall not qualify as an agricultural processing facility unless its construction or development involves the investment of more than one million dollars derived from nongovernmental sources.

**Source:** Laws 1967, c. 74, § 1, p. 240; Laws 1997, LB 875, § 1; Laws 2009, LB495, § 6; Laws 2017, LB133, § 110.  
Effective date August 24, 2017.

## Cross References

Community Development Law, see section 18-2101.

**17-405.02 Contiguous land, defined.**

For purposes of section 17-405.01, lands, lots, tracts, streets, or highways shall be deemed contiguous although a stream, roadway, embankment, strip, or parcel of land not more than five hundred feet wide lies between such lands, lots, tracts, streets, or highways and the corporate limits of a city of the second class or village.

**Source:** Laws 1967, c. 74, § 2, p. 241; Laws 1971, LB 890, § 1; Laws 2017, LB133, § 111.  
Effective date August 24, 2017.

**17-405.03 Laws, codes, rules, or regulations; effect of annexation.**

Any extraterritorial zoning regulations, property use regulations, or other laws, codes, rules, or regulations imposed upon any annexed lands by the city of the second class or village before such annexation shall continue in full force and effect until otherwise changed.

**Source:** Laws 1967, c. 74, § 3, p. 241; Laws 2017, LB133, § 112.  
Effective date August 24, 2017.

**17-405.04 Inhabitants of annexed land; benefits; ordinances.**

The inhabitants of territories annexed under sections 17-405.01 to 17-405.05 shall receive substantially the benefits of other inhabitants of such city of the second class or village as soon as practicable, and adequate plans and necessary city council or village board of trustees action to furnish such benefits as police, fire, snow removal, and water service must be adopted not later than one year after the date of annexation, and such inhabitants shall be subject to the ordinances and regulations of such city or village, except that such one-year period shall be tolled pending final court decision in any court action to contest such annexation.

**Source:** Laws 1967, c. 74, § 4, p. 241; Laws 2017, LB133, § 113.  
Effective date August 24, 2017.

**17-405.05 City or village in two or more counties; annexation by city or village; procedure.**

When any city of the second class or village situated in two or more counties shall desire to annex to its corporate limits any contiguous territory, whether within the counties within which such city or village is situated or otherwise, such territory may be annexed in the manner provided by sections 17-405.01 to 17-405.04.

**Source:** Laws 1903, c. 23, § 2, p. 259; R.S.1913, § 5089; C.S.1922, § 4262; C.S.1929, § 17-411; R.S.1943, § 17-413; Laws 1967, c. 74, § 5, p. 241; R.S.1943, (1987), § 17-413; Laws 2017, LB133, § 114.  
Effective date August 24, 2017.

**17-406 Transferred to section 18-3302.**

**17-407 Annexation by city or village within county between 100,000 and 250,000 inhabitants; mayor and city council or chairperson and village board of trustees; powers; notice; contents; liability; limitation on action.**

(1) The provisions of this section shall govern annexation by a city of the second class or village located in whole or in part within the boundaries of a county having a population in excess of one hundred thousand inhabitants but less than two hundred fifty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

(2) The mayor and city council of any city of the second class or the chairperson and members of the village board of trustees of any village described in subsection (1) of this section may by ordinance, except as provided in sections 13-1111 to 13-1118, at any time include within the corporate limits of such city or village any contiguous or adjacent lands, lots, tracts, streets, or highways as are urban or suburban in character and in such direction as may be deemed proper. Such grant of power shall not be construed as conferring power to extend the limits of any such municipality over any agricultural lands which are rural in character.

(3) Not later than fourteen days prior to the public hearing before the planning commission on a proposed annexation by the city or village, the city clerk or village clerk shall send notice of the proposed annexation by certified mail, return receipt requested, to any of the following entities serving customers in such city or village or in the area proposed for annexation: Any natural gas public utility as defined in section 66-1802; any natural gas utility owned or operated by the city or village; any metropolitan utilities district; any public power district; any public power and irrigation district; any municipality; any electric cooperative; and any other governmental entity providing electric service. Such notice shall include a copy of the proposed annexation ordinance, the date, time, and place of the public hearing before the planning commission on the proposed annexation ordinance, and a map showing the boundaries of the area proposed for annexation.

(4) Prior to the final adoption of the annexation ordinance, the minutes of the meeting of the city council or village board of trustees at which such final adoption was considered shall reflect formal compliance with subsection (3) of this section.

(5) No additional or further notice beyond that required by subsection (3) of this section shall be necessary in the event (a) that the scheduled public hearing of the city council or village board of trustees on the proposed annexation is adjourned, continued, or postponed until a later date or (b) that subsequent to providing such notice the ordinance regarding such proposed annexation was amended, changed, or rejected by action of the city council or village board of trustees prior to formal passage of the annexation ordinance.

(6) Except for a willful or deliberate failure to cause notice to be given, no annexation decision made by a city of the second class or village either to accept or reject a proposed annexation, either in whole or in part, shall be void, invalidated, or affected in any way because of any irregularity, defect, error, or failure on the part of the city or village or its employees to cause notice to be given as required by this section if a reasonable attempt to comply with this section was made.

(7) Except for a willful or deliberate failure to cause notice to be given, the city or village and its employees shall not be liable for any damage to any person resulting from any failure to cause notice to be given as required by this section when a reasonable attempt was made to provide such notice. No action for damages resulting from the failure to cause notice to be provided as required by this section shall be filed more than one year following the date of the formal acceptance or rejection of the proposed annexation, either in whole or in part, by the city council or village board of trustees.

(8) No action to challenge the validity of the acceptance or rejection of a proposed annexation on the basis of this section shall be filed more than one year following the date of the formal acceptance or rejection of the annexation by the city council or village board of trustees.

**Source:** Laws 2009, LB495, § 7; Laws 2017, LB74, § 2; Laws 2017, LB133, § 115.

Effective date August 24, 2017.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB74, section 2, with LB133, section 115, to reflect all amendments.

#### **17-412 Transferred to section 18-3303.**

#### (c) DETACHMENT OF TERRITORY WITHIN CITY LIMITS

##### **17-414 Land within corporate limits; disconnection; procedure.**

Whenever a majority of the legal voters residing on any territory within and adjacent to the corporate limits of any city of the second class or village or the owner or owners of any unoccupied territory so situated desire to have the territory disconnected from such city or village, they may file a petition in the district court of the county in which such city or village is situated requesting that such territory be detached. The petitioners shall, within ten days after the filing of such petition, cause a copy of such petition to be served on such city or village in the manner provided by law for the service of summons in a civil action. If the city or village by a majority vote of all members of the city council or village board of trustees consents that such territory be disconnected, the court shall enter a decree disconnecting the territory, and in such case no costs shall be taxed against such city or village. In case such a city or village desires to contest such petition, it shall file its answer to such petition within thirty days after the service of a copy of the petition and upon such filing shall be joined to the issue and the cause shall be tried by the court as a suit in equity. If the court finds in favor of the petitioners and that justice and equity require that such territory, or any part thereof, be disconnected from such city or village, it shall enter a decree accordingly. In all cases such a decree disconnecting part or all of such territory shall particularly describe the territory affected and a certified copy of such decree shall be recorded in the office of the register of deeds or county clerk of the county in which such territory is situated. A certified copy of such decree shall also be forwarded to and filed in the office of the affected city clerk or village clerk. Either party may prosecute an appeal from the finding and decree of the district court to the Court of Appeals.

**Source:** Laws 1879, § 101, p. 232; Laws 1881, c. 23, § 12, p. 192; Laws 1901, c. 20, § 1, p. 320; R.S.1913, § 5090; C.S.1922, § 4263;



C.S.1929, § 17-412; R.S.1943, § 17-414; Laws 1945, c. 27, § 1, p. 138; Laws 1991, LB 732, § 20; Laws 2017, LB133, § 116.  
Effective date August 24, 2017.

## (d) PLATTING

- 17-415 Transferred to section 18-3304.**
- 17-416 Transferred to section 18-3305.**
- 17-417 Transferred to section 18-3306.**
- 17-418 Transferred to section 18-3307.**
- 17-419 Transferred to section 18-3308.**
- 17-420 Transferred to section 18-3309.**
- 17-421 Transferred to section 18-3310.**
- 17-422 Transferred to section 18-3311.**
- 17-423 Transferred to section 18-3312.**
- 17-424 Transferred to section 18-3313.**
- 17-425 Transferred to section 18-3314.**
- 17-426 Transferred to section 18-3315.**

**ARTICLE 5****GENERAL GRANT OF POWER**

Section	
17-501.	Cities of the second class and villages; powers; board of public trust; members; duties.
17-502.	Seal; other powers.
17-503.	Real property; sale; exception; procedure; remonstrance petition; procedure; hearing.
17-503.02.	Personal property; sale; procedure; other conveyance.
17-504.	Corporate name; process; service.
17-505.	Ordinances, rules, and regulations; enactment; enforcement.
17-505.01.	Notice; publication.
17-507.	Other taxes; power to levy.
17-508.	Streets; grading and repair, when; bridges and sewers; construction.
17-508.02.	Streets; grading and repair; bridges and sewers; tax limits.
17-509.	Streets and malls; power to improve; districts.
17-510.	Streets; improvement district; creation by petition; denial; special assessments.
17-511.	Streets; improvement by ordinance; objections; time of filing; special assessment.
17-512.	Streets; main thoroughfares; improvement by ordinance; assessments.
17-513.	Streets; improvement; petitions and protests; sufficiency; how determined; appeal.
17-514.	Streets; improvement; assessments; certification to county treasurer.
17-515.	Streets and malls; improvement; assessments; interest; when delinquent; payment in installments.
17-516.	Streets and malls; improvement; paving bonds; warrants; interest; terms.
17-518.	Streets; improvement; sinking fund; investment.
17-519.	Streets; improvement; assessments against public lands; payment.

## CITIES OF THE SECOND CLASS AND VILLAGES

Section	
17-520.	Streets; improvement; intersections; property; assessment; Intersection Paving Bonds; warrants; interest; partial payments; final payments.
17-521.	Streets; improvement; railways; duty to pave.
17-522.	Sidewalks; repair; cost; assessment; notice.
17-523.	Sidewalks; temporary walks; construction; cost.
17-524.	Streets and sidewalks; improvements; assessments; how made; collection.
17-525.	Occupation tax; power to levy; exceptions.
17-526.	Dogs and other animals; license tax; enforcement.
17-527.	Elections; rules governing; power to prescribe.
17-528.	Electricity; franchises and contracts; tax; sale by public service company to city.
17-528.02.	Gas franchises; length; conditions; tax.
17-528.03.	Electricity franchises; length; conditions; election, when required; exceptions.
17-529.	Watercourses; aqueducts; wells; regulation.
17-529.01.	Dikes; erection and maintenance; eminent domain; procedure.
17-529.02.	Flood control projects; cooperation with United States; consent to requirements.
17-529.03.	Flood control projects; removal to another site; definitions.
17-529.05.	Flood control projects; removal to another site; petition; contents; order for hearing; notice.
17-529.06.	Flood control projects; removal to another site; hearing; entry of order.
17-529.07.	Flood control projects; removal to another site; order; effect.
17-529.08.	Flood control projects; bonds; interest; election; tax; levy.
17-530.	Waterworks; franchises; terms.
17-531.	Waterworks; acquisition or construction authorized.
17-532.	Waterworks; private companies; compulsory connections.
17-533.	Waterworks; construction; bids.
17-534.	Waterworks; purchase or construction; bonds; interest; limitation; tax; approval of electors required; exception.
17-535.	Waterworks; construction and maintenance; acquisition of land beyond extraterritorial zoning jurisdiction; procedure.
17-536.	Waterworks; water supply; pollution; power to prevent.
17-537.	Waterworks; rules and regulations.
17-538.	Waterworks; use of water; rates or rental; collection.
17-539.	Waterworks; construction; cost; special assessments.
17-540.	Waterworks; income; how used; surplus, investment.
17-541.	Waterworks; water commissioner; appointment; term; bond or insurance; removal; public works commissioner, when.
17-542.	Waterworks; rates; regulation.
17-543.	Waterworks; water commissioner; duty to account; report; salary; public works commissioner; duties.
17-545.	Waterworks; additional tax; when authorized.
17-546.	Waterworks; additional tax; provision cumulative.
17-547.	Animals running at large; regulation.
17-548.	Pounds; establishment.
17-549.	Fire prevention; regulations.
17-550.	Buildings; construction; regulation.
17-551.	Railways; depots; regulation.
17-552.	Railways; crossings; safety regulations.
17-554.	Fuel and feed; inspection and weighing.
17-555.	Streets and sidewalks; removal of obstructions; trees; declaration of nuisance; procedure; special assessment.
17-556.	Public safety; firearms; explosives; riots; regulation.
17-557.	Streets; safety regulations; removal of snow, ice, and other encroachments.
17-557.01.	Sidewalks; removal of encroachments; cost of removal; special assessments; interest.
17-558.	Streets; improving; vacating; abutting property; how treated.
17-559.	Streets; offstreet parking; markets; public utilities; establishment; eminent domain; procedure.
17-560.	Borrowing power; pledges.

Section	
17-561.	Railway tracks; lighting, city may require; cost; assessment.
17-563.	Lots; drainage; weeds or litter; nuisance; noncompliance by owner; notice; hearing; special assessment; violation; penalty; civil action.
17-564.	Fines; actions to recover.
17-565.	Fines; action to recover; limitation.
17-566.	County jail; use by city; compensation.
17-567.	Highways, streets, bridges; maintenance and control.
17-568.	Employment of special engineer.
17-568.01.	City engineer or village engineer; public works; prepare estimate of cost; board of public works; powers; contracts; procedure; city council or village board of trustees; powers and duties; public emergency.
17-568.02.	Municipal bidding procedure; waiver; when.
17-569.	Abandoned real estate; sale; ordinance.
17-570.	Abandoned real estate; sale; notice.
17-571.	Abandoned real estate; sale; sealed bids; deed.
17-572.	Loans to students; conditions.
17-573.	Litter; removal; notice; action by city or village.
17-574.	Sewerage and drainage; districts; regulation.
17-575.	Sewerage and drainage; failure of property owner to connect; notice; cost; special assessment; collection.

**17-501 Cities of the second class and villages; powers; board of public trust; members; duties.**

Cities of the second class and villages shall be bodies corporate and politic and shall have power (1) to sue and be sued; (2) to contract or be contracted with; (3) to acquire and hold real and personal property within or without the limits of the city or village, for the use of the city or village, convey property, real or personal, and lease, lease with option to buy, or acquire by gift or devise real or personal property; and (4) to receive and safeguard donations in trust and may, by ordinance, supervise and regulate such property and the principal and income constituting the foundation or community trust property in conformity with the instrument or instruments creating such trust. The city council of any city of the second class or the village board of trustees may elect a board of five members, to be known as a board of public trust, who shall be residents of such city or village and whose duties shall be defined by ordinance and who shall have control and management of such donations in trust, in conformity with such ordinance. At the time of the establishment of the board of public trust, one member shall be elected for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, and thereafter one member shall be elected each year for a term of five years. Vacancies in the membership of the board of public trust shall be filled in like manner as regular members of the board of public trust are elected.

**Source:** Laws 1879, § 56, p. 206; R.S.1913, § 5080; Laws 1917, c. 100, § 1, p. 264; C.S.1922, § 4252; C.S.1929, § 17-401; Laws 1933, c. 29, § 1, p. 206; Laws 1935, Spec. Sess., c. 10, § 6, p. 75; Laws 1937, c. 30, § 1, p. 153; Laws 1941, c. 25, § 1, p. 120; Laws 1941, c. 130, § 14, p. 498; C.S.Supp.,1941, § 17-401; Laws 1943, c. 34, § 1, p. 152; R.S.1943, § 17-501; Laws 1971, LB 32, § 3; Laws 2005, LB 626, § 3; Laws 2017, LB133, § 117.  
Effective date August 24, 2017.

**17-502 Seal; other powers.**

Each city of the second class or village shall have a common seal, which it may change and alter at pleasure, and such other powers as may be conferred by law.

**Source:** Laws 1879, § 56, p. 207; R.S.1913, § 5080; Laws 1917, c. 100, § 1, p. 264; C.S.1922, § 4252; C.S.1929, § 17-401; Laws 1933, c. 29, § 1, p. 206; Laws 1935, Spec. Sess., c. 10, § 6, p. 75; Laws 1937, c. 30, § 1, p. 153; Laws 1941, c. 25, § 1, p. 120; Laws 1941, c. 130, § 14, p. 498; C.S.Supp.,1941, § 17-401; Laws 1943, c. 34, § 1, p. 153; R.S.1943, § 17-502; Laws 2017, LB133, § 118. Effective date August 24, 2017.

**17-503 Real property; sale; exception; procedure; remonstrance petition; procedure; hearing.**

(1) Except as provided in section 17-503.01, the power of any city of the second class or village to convey any real property owned by it, including land used for park purposes and public squares, except real property used in the operation of public utilities, shall be exercised by resolution directing the sale of such real property.

(2) After the passage of the resolution directing the sale, notice of all proposed sales of property described in subsection (1) of this section and the terms of such sales shall be published once each week for three consecutive weeks in a legal newspaper in or of general circulation in such city or village.

(3) If within thirty days after the third publication of the notice a remonstrance petition against such sale is signed by registered voters of the city or village equal in number to thirty percent of the registered voters of the city or village voting at the last regular municipal election held in such city or village and is filed with the governing body of such city or village, such property shall not then, nor within one year thereafter, be sold. If the date for filing the petition falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the thirty-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day. Upon the receipt of the petition, the governing body of such city or village, with the aid and assistance of the election commissioner or county clerk, shall determine the validity and sufficiency of signatures on the petition. The governing body of such city or village shall deliver the 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 petition, the election commissioner or county clerk shall issue to the governing body a written receipt that the petition is in the custody of the election commissioner or county clerk. The election commissioner or county clerk shall compare the signature of each person signing the petition with the voter registration records to determine if each signer was a registered voter on or before the date on which the petition was filed with the governing body. The election commissioner or county clerk shall also compare the signer's printed name, street 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 signature and address shall be presumed to be valid only if the election commissioner or county clerk determines that the printed name, street and number or voting precinct, and city, village, or post office address matches the registration records and that the registration was received on or before the date on which the petition was filed

with the governing body. The determinations of the election commissioner or county clerk may be rebutted by any credible evidence which the governing body 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 the petition, the sufficiency of the petition, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the petition process. Upon completion of the comparison of names and addresses with the voter registration records, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the signature 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 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 certify to the governing body the number of valid signatures necessary to constitute a valid petition. The election commissioner or county clerk shall deliver the petition and the certifications to the governing body within forty days after the receipt of the petition from the governing body. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Not more than twenty signatures on one signature page shall be counted.

The governing body shall, within thirty days after the receipt of the petition and certifications from the election commissioner or county clerk, hold a public hearing to review the petition and certifications and receive testimony regarding them. The governing body shall, following the hearing, vote on whether or not the petition is valid and shall uphold the petition if sufficient valid signatures have been received.

(4) Real property now owned or hereafter owned by a city of the second class or a village may be conveyed without consideration to the State of Nebraska for state armory sites or, if acquired for state armory sites, shall be conveyed strictly in accordance with the conditions of sections 18-1001 to 18-1006.

(5) Following (a) passage of the resolution directing a sale, (b) publishing of the notice of the proposed sale, and (c) passing of the thirty-day right-of-remonstrance period, the property shall then be sold. Such sale shall be confirmed by passage of an ordinance stating the name of the purchaser and terms of the sale.

(6) Notwithstanding the procedures in subsections (1) through (5) of this section, real property owned by a city of the second class or a village may be conveyed when such property:

- (a) Is sold in compliance with the requirements of federal or state grants or programs;
- (b) Is conveyed to another public agency; or
- (c) Consists of streets and alleys.

**Source:** Laws 1879, § 56, p. 207; R.S.1913, § 5080; Laws 1917, c. 100, § 1, p. 264; C.S.1922, § 4252; C.S.1929, § 17-401; Laws 1933, c.

29, § 1, p. 206; Laws 1935, Spec. Sess., c. 10, § 8, p. 76; Laws 1937, c. 30, § 1, p. 153; Laws 1941, c. 25, § 1, p. 120; Laws 1941, c. 130, § 14, p. 498; C.S.Supp.,1941, § 17-401; Laws 1943, c. 34, § 1, p. 153; R.S.1943, § 17-503; Laws 1957, c. 30, § 1, p. 190; Laws 1957, c. 31, § 1, p. 193; Laws 1971, LB 399, § 1; Laws 1981, LB 33, § 1; Laws 1982, LB 909, § 4; Laws 1988, LB 793, § 5; Laws 1993, LB 59, § 2; Laws 1997, LB 230, § 2; Laws 2003, LB 476, § 1; Laws 2017, LB133, § 119; Laws 2017, LB315, § 1. Effective date August 24, 2017.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB133, section 119, with LB315, section 1, to reflect all amendments.

**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 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; Laws 2017, LB133, § 120.  
Effective date August 24, 2017.

**17-504 Corporate name; process; service.**

The corporate name of each city of the second class or village shall be the City (or Village) of . . . . ., and all and every process and notice whatever affecting such city or village shall be served in the manner provided for service of a summons in a civil action.

**Source:** Laws 1879, § 57, p. 207; R.S.1913, § 5081; C.S.1922, § 4253; C.S.1929, § 17-402; R.S.1943, § 17-504; Laws 1983, LB 447, § 6; Laws 2017, LB133, § 121.  
Effective date August 24, 2017.

**17-505 Ordinances, rules, and regulations; enactment; enforcement.**

In addition to those special powers specifically granted by law, cities of the second class and villages shall have the power to make all such ordinances, bylaws, rules, regulations, and resolutions, not inconsistent with the laws of the state, as may be expedient for maintaining the peace, good government, and welfare of the city or village and its trade and commerce and to enforce all

ordinances by inflicting fines or penalties for the breach of such ordinances, not exceeding five hundred dollars for any one offense, recoverable with costs.

**Source:** Laws 1879, § 69, XII, p. 213; Laws 1881, c. 23, § 8, XII, p. 175; Laws 1885, c. 20, § 1, XII, p. 166; Laws 1887, c. 12, § 1, XII, p. 294; R.S.1913, § 5106; C.S.1922, § 4279; C.S.1929, § 17-428; R.S.1943, § 17-505; Laws 1999, LB 128, § 2; Laws 2017, LB133, § 122.

Effective date August 24, 2017.

**17-505.01 Notice; publication.**

If a city of the second class or village is required to publish a notice or advertisement in a legal newspaper in or of general circulation in the city or village, and if there is no legal newspaper in or of general circulation in such city or village, then the city or village shall publish such notice or advertisement in a legal newspaper in or of general circulation in the county in which such city or village is located. If there is no legal newspaper in or of general circulation in such county, then the city or village shall publish such notice or advertisement by posting a written or printed copy thereof in each of three public places in the city or village for the same period of time such city or village is required to publish the notice or advertisement in a legal newspaper.

**Source:** Laws 2017, LB133, § 123.

Effective date August 24, 2017.

**17-507 Other taxes; power to levy.**

Cities of the second class and villages shall have power to levy any other tax or special assessment authorized by law.

**Source:** Laws 1879, § 69, II, p. 211; Laws 1881, c. 23, § 8, II, p. 173; Laws 1885, c. 20, § 1, II, p. 163; Laws 1887, c. 12, § 1, II, p. 291; R.S.1913, § 5108; C.S.1922, § 4281; C.S.1929, § 17-430; R.S. 1943, § 17-507; Laws 2017, LB133, § 124.

Effective date August 24, 2017.

**17-508 Streets; grading and repair, when; bridges and sewers; construction.**

Cities of the second class and villages shall have the power to provide for the grading and repair of any street, avenue, or alley and the construction of bridges, culverts, and sewers. No street, avenue, or alley shall be graded unless such street, avenue, or alley shall be ordered to be done by the affirmative vote of two-thirds of the city council or village board of trustees.

**Source:** Laws 1879, § 69, III, p. 211; Laws 1881, c. 23, § 8, III, p. 173; Laws 1885, c. 20, § 1, III, p. 163; Laws 1887, c. 12, § 1, III, p. 291; Laws 1903, c. 20, § 1, p. 248; R.S.1913, § 5109; Laws 1915, c. 91, § 1, p. 231; C.S.1922, § 4282; C.S.1929, § 17-431; R.S. 1943, § 17-508; Laws 1945, c. 28, § 1, p. 140; Laws 1945, c. 29, § 1, p. 143; Laws 1947, c. 23, § 1(1), p. 143; Laws 2017, LB133, § 125.

Effective date August 24, 2017.

**17-508.02 Streets; grading and repair; bridges and sewers; tax limits.**

For purposes of section 17-508, cities of the second class and villages shall have power to levy in any one year not to exceed ten and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property within the limits of such cities and villages.

**Source:** Laws 1879, § 69, III, p. 211; Laws 1881, c. 23, § 8, III, p. 173; Laws 1885, c. 20, § 1, III, p. 163; Laws 1887, c. 12, § 1, III, p. 291; Laws 1903, c. 20, § 1, p. 248; R.S.1913, § 5109; Laws 1915, c. 91, § 1, p. 231; C.S.1922, § 4282; C.S.1929, § 17-431; R.S. 1943, § 17-508; Laws 1945, c. 28, § 1, p. 140; Laws 1945, c. 29, § 1, p. 143; Laws 1947, c. 33, § 1(3), p. 144; Laws 1953, c. 287, § 15, p. 939; Laws 1979, LB 187, § 50; Laws 1992, LB 719A, § 52; Laws 2017, LB133, § 126.  
Effective date August 24, 2017.

### **17-509 Streets and malls; power to improve; districts.**

The governing body of any city of the second class or village may grade, partially or to an established grade, change grade, curb, recurb, gutter, regutter, pave, gravel, regravels, macadamize, remacadamize, widen or narrow streets or roadways, resurface or relay existing pavement, or otherwise improve any streets, alleys, public grounds, public ways, entirely or partially, and streets which divide the city or village corporate limits and the area adjoining the city or village; construct or reconstruct pedestrian walks, plazas, malls, landscaping, outdoor sprinkler systems, fountains, decorative water ponds, lighting systems, and permanent facilities; and construct sidewalks and improve the sidewalk space. These projects may be funded at public cost or by the levy of special assessments on the property especially benefited in proportion to such benefits, except as provided in sections 19-2428 to 19-2431. The governing body may by ordinance create improvement districts, to be consecutively numbered, which may include two or more connecting or intersecting streets, alleys, or public ways, and may include two or more types of improvements authorized under this section in a single district in one proceeding. All of the improvements which are to be funded by a levy of special assessment on the property especially benefited shall be ordered as provided in sections 17-510 to 17-512, unless the governing body improves a street which divides the city or village corporate area and the area adjoining the city or village. Whenever the governing body of any city of the second class or village improves any street which divides the city or village corporate limits and the area adjoining the city or village, the governing body shall determine the sufficiency of petition as set forth in section 17-510 by the owners of the record title representing more than sixty percent of the front footage of the property directly abutting upon the street to be improved, rather than sixty percent of the resident owners. Whenever the governing body shall deem it necessary to make any of the improvements authorized under this section on a street which divides the city or village corporate limits and the area adjoining the city or village, the governing body shall by ordinance create the improvement district pursuant to section 17-511 and the right of remonstrance shall be limited to owners of record title, rather than resident owners.

**Source:** Laws 1879, § 69, IV, p. 211; Laws 1881, c. 23, § 8, IV, p. 173; Laws 1885, c. 20, § 1, IV, p. 163; Laws 1887, c. 12, § 7, IV, p. 292; Laws 1903, c. 20, § 1, IV, p. 163; Laws 1909, c. 22, § 1, p. 191; Laws 1911, c. 21, § 1, p. 138; R.S.1913, § 5110; Laws 1915,



c. 92, § 1, p. 232; Laws 1917, c. 102, § 1, p. 267; Laws 1919, c. 50, § 1, p. 144; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 300; Laws 1927, c. 42, § 1, p. 176; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 529; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-509; Laws 1969, c. 92, § 1, p. 456; Laws 1979, LB 136, § 3; Laws 1983, LB 94, § 2; Laws 1995, LB 196, § 2; Laws 2017, LB133, § 127.

Effective date August 24, 2017.

**17-510 Streets; improvement district; creation by petition; denial; special assessments.**

If a petition is signed by the owners of the record title representing more than sixty percent of the front footage of property directly abutting upon the streets, alleys, public ways, or public grounds proposed to be improved in an improvement district created pursuant to section 17-509 and presented and filed with the city clerk or village clerk, the governing body of the city or village shall by ordinance create an improvement district, cause such work to be done or such improvement to be made, contract for such improvement, and levy special assessments on the lots and parcels of land abutting on or adjacent to such streets or alleys specially benefited by such improvement in such district in proportion to such benefits, except as provided in sections 19-2428 to 19-2431, to pay the cost of such improvement. The governing body may deny the formation of the proposed improvement district when the area has not previously been improved with a water system, sewer system, and grading of streets. If the governing body denies a requested improvement district formation, it shall state the grounds for such denial in a written letter to interested parties.

**Source:** Laws 1879, § 69, IV, p. 211; Laws 1881, c. 23, § 8, IV, p. 173; Laws 1885, c. 20, § 1, IV, p. 163; Laws 1887, c. 12, § 1, IV, p. 292; Laws 1903, c. 20, § 1, p. 248; Laws 1909, c. 22, § 1, p. 191; Laws 1911, c. 21, § 1, p. 139; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 232; Laws 1917, c. 102, § 1, p. 268; Laws 1919, c. 50, § 1, p. 145; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 331; Laws 1927, c. 42, § 1, p. 177; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 529; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-510; Laws 1979, LB 176, § 1; Laws 1983, LB 125, § 2; Laws 1983, LB 94, § 3; Laws 2015, LB361, § 29; Laws 2017, LB133, § 128.  
Effective date August 24, 2017.

**17-511 Streets; improvement by ordinance; objections; time of filing; special assessment.**

Whenever the governing body of a city of the second class or village deems it necessary to make the improvements in section 17-509 which are to be funded by a levy of special assessment on the property specially benefited, such governing body shall by ordinance create an improvement district and, after the passage, approval, and publication of such ordinance, shall publish notice of the creation of any such district for six days in a legal newspaper in or of general circulation in the city or village if such legal newspaper is a daily newspaper or for two consecutive weeks if such legal newspaper is a weekly newspaper. If the owners of the record title representing more than fifty percent of the front footage of the property directly abutting on the street or alley to be improved file with the city clerk or village clerk within twenty days

after the first publication of such notice written objections to the creation of such district, such improvement shall not be made as provided in such ordinance, but such ordinance shall be repealed. If objections are not filed against the district in the time and manner prescribed in this section, the governing body shall immediately cause such work to be done or such improvement to be made, shall contract for the work or improvement, and shall levy special assessments on the lots and parcels of land abutting on or adjacent to such street or alley specially benefited in such district in proportion to such benefits to pay the cost of such improvement.

**Source:** Laws 1927, c. 42, § 1, p. 177; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 530; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-511; Laws 1979, LB 176, § 2; Laws 1986, LB 960, § 8; Laws 1995, LB 196, § 3; Laws 2015, LB361, § 30; Laws 2017, LB133, § 129.  
Effective date August 24, 2017.

**17-512 Streets; main thoroughfares; improvement by ordinance; assessments.**

The city council of a city of the second class or village board of trustees may, by a three-fourths vote of all members of such city council or village board of trustees, enact an ordinance creating an improvement district, order such work to be done without petition upon any federal or state highways in the city or village or upon a street or route, designated by the mayor and city council or village board of trustees as a main thoroughfare, that connects to either a federal or state highway or a county road, and shall contract for such work, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street or alley specially benefited thereby in such district in proportion to such benefits, to pay the cost of such improvement.

**Source:** Laws 1879, § 69, IV, p. 211; Laws 1881, c. 23, § 8, IV, p. 173; Laws 1885, c. 20, § 1, IV, p. 163; Laws 1903, c. 20, § 1, p. 248; Laws 1909, c. 22, § 1, p. 191; Laws 1911, c. 21, § 1, p. 139; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 232; Laws 1917, c. 102, § 1, p. 268; Laws 1919, c. 50, § 1, p. 145; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 331; Laws 1927, c. 42, § 1, p. 178; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 530; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-512; Laws 1972, LB 1320, § 1; Laws 2015, LB361, § 31; Laws 2017, LB133, § 130.  
Effective date August 24, 2017.

**17-513 Streets; improvement; petitions and protests; sufficiency; how determined; appeal.**

Before proceeding with any improvement under section 17-509, the sufficiency of the protests or petitions or of the existence of the required facts and conditions shall be determined by the city council or village board of trustees at a hearing of which notice shall be given to all persons who may become liable for assessments by one publication in each of two successive weeks in a legal newspaper in or of general circulation in the city or village. Appeal from the action of the city council or village board of trustees may be made to the district court of the county in which the proposed district is situated. The sufficiency of the protests or petitions referred to in sections 17-510 and 17-511, as to the ownership of the property, shall be determined by the record in the office of the

county clerk or register of deeds at the time of the adoption of such ordinance. In determining the sufficiency of the petitions or objections, intersections shall be disregarded, and any lot or ground owned by the city or village shall not be counted for or against such improvement.

**Source:** Laws 1927, c. 42, § 1, p. 178; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 530; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-513; Laws 1963, c. 71, § 1, p. 274; Laws 2017, LB133, § 131. Effective date August 24, 2017.

**17-514 Streets; improvement; assessments; certification to county treasurer.**

All assessments under sections 17-509 to 17-512 shall be a lien on the property on which levied from the date of levy and shall be certified by direction of the city council or village board of trustees to the city treasurer or village treasurer for collection. Except as provided in section 18-1216, such assessment shall be due and payable to such treasurer until the first day of November thereafter, or until the delivery of the tax list for such year to the county treasurer of the county in which such city or village is situated, at and after which time such assessment shall be due and payable to such county treasurer. The city council or village board of trustees of such city or village shall, within the time provided by law, cause such assessments, or portion thereof then remaining unpaid, to be certified to the county clerk for entry upon the proper tax lists. If the city treasurer or village treasurer collects any assessment or portion of such assessment so certified while such assessment shall be payable to the county treasurer, the city treasurer or village treasurer shall certify the assessment or portion of such assessment to the county treasurer at once, and the county treasurer shall correct the record to show such payment.

**Source:** Laws 1909, c. 21, § 1, p. 191; Laws 1911, c. 21, § 1, p. 139; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 232; Laws 1917, c. 102, § 1, p. 268; Laws 1919, c. 50, § 1, p. 145; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 331; Laws 1927, c. 42, § 1, p. 178; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 531; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-514; Laws 1996, LB 962, § 1; Laws 2017, LB133, § 132. Effective date August 24, 2017.

**17-515 Streets and malls; improvement; assessments; interest; when delinquent; payment in installments.**

(1) All assessments as provided in sections 17-509 to 17-512, except for paving, repaving, construction of malls and plazas, and the landscaping and permanent facilities of such malls and plazas, graveling, or curbing and guttering, shall draw interest until such assessments become delinquent, at a rate set by the city council or village board of trustees from the date of levy, and shall become delinquent on the first day of May subsequent to the date of levy, and shall thereafter draw interest at a rate not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature.

(2) Such assessments for paving, repaving, construction of malls and plazas, and the landscaping and permanent facilities of such malls and plazas, or curbing and guttering shall become delinquent in equal annual installments

over such period of years, not to exceed fifteen, as the city council or village board of trustees may determine at the time of making the levy, the first such equal installment to become delinquent in fifty days after the date of such levy.

(3) As to such assessments for graveling, one-third of the total amount assessed against each lot or parcel of land shall become delinquent in fifty days after the date of such levy; one-third in one year; and one-third in two years.

(4) Each of the installments, referred to in subsections (2) and (3) of this section, except the first, shall draw interest at a rate set by the city council or village board of trustees, from the time of the levy until such installment shall become delinquent; and after such installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon. Should there be three or more of such installments delinquent and unpaid on the same property, the city council or village board of trustees may by resolution declare all future installments on such delinquent property to be due on a fixed future date. All of such installments may be paid at one time on any lot or land within fifty days from the date of the levy without interest and, if so paid, such lot or land shall be exempt from any lien or charge for the levy.

**Source:** Laws 1909, c. 22, § 1, p. 192; Laws 1911, c. 21, § 1, p. 139; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 233; Laws 1917, c. 102, § 1, p. 268; Laws 1919, c. 50, § 1, p. 145; C.S. 1922, § 4283; Laws 1923, c. 135, § 1, p. 331; Laws 1927, c. 42, § 1, p. 178; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 531; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-515; Laws 1953, c. 34, § 1, p. 124; Laws 1959, c. 64, § 3, p. 287; Laws 1965, c. 65, § 1, p. 283; Laws 1969, c. 92, § 2, p. 457; Laws 1969, c. 51, § 43, p. 298; Laws 1976, LB 441, § 2; Laws 1980, LB 933, § 18; Laws 1981, LB 167, § 19; Laws 2017, LB133, § 133.  
Effective date August 24, 2017.

**17-516 Streets and malls; improvement; paving bonds; warrants; interest; terms.**

For the purpose of paying the cost of constructing, landscaping, and equipping malls and plazas, paving, repaving, macadamizing or graveling, curbing, guttering, or otherwise improving streets, avenues, or alleys in any improvement district, the mayor and city council of a city of the second class or village board of trustees shall have the power and may, by ordinance, cause to be issued bonds of the city or village to be called District Improvement Bonds of District No. . . . ., payable in not exceeding fifteen years from date, and to bear interest payable annually or semiannually with interest coupons attached or may issue its warrants, as other warrants are issued, to be called District Improvement Warrants of District No. . . . ., payable in the order of their number, to be issued in such denominations as may be deemed advisable, and to bear interest. When warrants are issued for the payment of such cost, special taxes and assessments shall be levied sufficient to pay such warrants and the interest thereon within three years from the date of issuance.

**Source:** Laws 1909, c. 22, § 1, p. 192; Laws 1911, c. 21, § 1, p. 140; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 233; Laws 1917, c. 102, § 1, p. 269; Laws 1919, c. 50, § 1, p. 146; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 332; Laws 1927, c. 42, § 1, p. 179;

C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 532; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-516; Laws 1963, c. 72, § 1, p. 275; Laws 1963, c. 73, § 1, p. 276; Laws 1969, c. 92, § 3, p. 458; Laws 1969, c. 51, § 44, p. 299; Laws 2017, LB133, § 134. Effective date August 24, 2017.

**17-518 Streets; improvement; sinking fund; investment.**

Pending final redemption of warrant or warrants or bond or bonds for paving issued under section 17-516, the city treasurer or village treasurer is authorized to invest such sinking fund in interest-bearing time certificates of deposit in depositories approved and authorized to receive county funds, but in no greater amount in any depository than such depository is authorized to receive deposits of county funds; and the interest arising from such certificate of deposit shall be credited to its respective sinking fund as provided by law.

**Source:** Laws 1923, c. 135, § 1, p. 332; Laws 1927, c. 42, § 1, p. 180; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 532; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-518; Laws 2017, LB133, § 135. Effective date August 24, 2017.

**17-519 Streets; improvement; assessments against public lands; payment.**

If in any city of the second class or village there shall be any real estate belonging to any county, school district, city, village, or other political subdivision adjacent to or abutting upon the street or other public way whereon paving, repaving, graveling, or other improvement has been ordered, it shall be the duty of the governing body of the political subdivision to provide for the payment of such special assessments or taxes as may be assessed against the real estate so adjacent or abutting or within an improvement district. In the event of the neglect or refusal so to do, the city or village may recover the amount of such special taxes or assessments in any proper action, and the judgment thus obtained may be enforced in the usual manner.

**Source:** Laws 1909, c. 22, § 1, p. 193; Laws 1911, c. 21, § 1, p. 140; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 234; Laws 1917, c. 102, § 1, p. 269; Laws 1919, c. 50, § 1, p. 146; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 333; Laws 1927, c. 42, § 1, p. 180; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 533; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-519; Laws 2017, LB133, § 136. Effective date August 24, 2017.

**17-520 Streets; improvement; intersections; property; assessment; Intersection Paving Bonds; warrants; interest; partial payments; final payments.**

In cities of the second class and villages, for all paving and improvements of the intersections and areas formed by the crossing of streets, avenues, or alleys, and one-half of the streets adjacent to real estate owned by the United States, the State of Nebraska, or the city or village, the assessment shall be made upon all of the taxable property of such city or village; and for the payment of such paving or improvements the mayor and city council or the village board of trustees are hereby authorized to issue paving bonds of the city or village, in such denominations as they deem proper to be called Intersection Paving

Bonds payable in not to exceed fifteen years from the date of such bonds, and to bear interest payable annually or semiannually. Such bonds shall not be issued until the work is completed and then not in excess of the cost of such improvements. For the purpose of making partial payments as the work progresses in paving, repaving, macadamizing or graveling, curbing, and guttering or improvements of streets, avenues, alleys, or intersections and areas formed by the crossing of streets, avenues, or alleys, or one-half of the streets adjacent to real estate owned by the United States, the State of Nebraska, or the city or village, warrants may be issued by the mayor and city council, or the village board of trustees, upon certificates of the engineer in charge showing the amount of the work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project, in a sum not exceeding ninety-five percent of the cost thereof, and upon completion and acceptance of the work issue a final warrant for the balance of the amount due the contractor, which warrants shall be redeemed and paid upon the sale of bonds authorized by law. The city or village shall pay to the contractor interest, at the rate of eight percent per annum on the amounts due on partial and final payments, beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the governing body and running until the date that the warrant is tendered to the contractor. Nothing in this section shall be construed as authorizing the mayor and city council or village board of trustees to pave or gravel any intersections or areas formed by the crossing of streets, avenues, or alleys unless in connection with one or more blocks of street paving or graveling of which the paving or graveling of such intersection or area shall form a part.

**Source:** Laws 1909, c. 22, § 1, p. 193; Laws 1911, c. 21, § 1, p. 141; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 234; Laws 1917, c. 102, § 1, p. 269; Laws 1919, c. 50, § 1, p. 146; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 333; Laws 1927, c. 42, § 1, p. 180; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 533; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-520; Laws 1965, c. 65, § 2, p. 284; Laws 1969, c. 51, § 45, p. 299; Laws 1975, LB 112, § 2; Laws 2017, LB133, § 137.  
Effective date August 24, 2017.

#### **17-521 Streets; improvement; railways; duty to pave.**

Any street or other railway company, occupying with any track any street, avenue, or alley or portion thereof, which may be ordered paved, repaved, macadamized, or graveled, may be charged with the expense of such improvement of such portion of such street, avenue, or alley so occupied by it between its tracks, between its rails, and for one foot beyond the outer rails; and the cost of such improvement may be collected and enforced against such company in such manner as may be provided by ordinance; or the mayor and city council or village board of trustees may by ordinance require such company to pave, repave, macadamize, or gravel such portion of such street, avenue, or alley occupied by such tracks and for one foot beyond its outside rails.

**Source:** Laws 1909, c. 22, § 1, p. 194; Laws 1911, c. 21, § 1, p. 141; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 234; Laws 1917, c. 102, § 1, p. 270; Laws 1919, c. 50, § 1, p. 148; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 334; Laws 1927, c. 42, § 1, p. 181; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 534;

C.S.Supp.,1941, § 17-432; R.S.1943, § 17-521; Laws 2017, LB133, § 138.

Effective date August 24, 2017.

**17-522 Sidewalks; repair; cost; assessment; notice.**

(1) The mayor and city council of a city of the second class or village board of trustees may construct and repair sidewalks or cause the construction and repair of sidewalks in such manner as the mayor and city council or village board of trustees deems necessary and assess the expense of such construction or repairs on the property in front of which such construction or repairs are made, after having given notice (a) by publication in one issue of a legal newspaper in or of general circulation in such city or village and (b) by either causing a written notice to be served upon the occupant in possession of the property involved or to be posted upon such premises ten days prior to the commencement of such construction or repair. The powers conferred under this section are in addition to those provided in sections 17-509 to 17-521 and may be exercised without creating an improvement district.

(2) If the owner of any property abutting any street or avenue or part thereof fails to construct or repair any sidewalk in front of the owner's property within the time and in the manner as directed and requested by the mayor and city council or village board of trustees, after having received due notice to do so, the mayor and city council or village board of trustees may cause the sidewalk to be constructed or repaired and may assess the cost of such construction or repairs against the property.

**Source:** Laws 1879, § 69, V, p. 211; Laws 1881, c. 23, § 8, V, p. 173; Laws 1885, c. 20, § 1, V, p. 163; Laws 1887, c. 12, § 1, V, p. 292; R.S.1913, § 5111; C.S.1922, § 4284; C.S.1929, § 17-433; Laws 1943, c. 31, § 1, p. 141; R.S.1943, § 17-522; Laws 1947, c. 34, § 1, p. 144; Laws 2005, LB 161, § 6; Laws 2017, LB133, § 139. Effective date August 24, 2017.

**17-523 Sidewalks; temporary walks; construction; cost.**

Cities of the second class and villages shall have the power to provide for the laying of temporary sidewalks, upon the natural surface of the ground, without regard to grade, on streets not permanently improved, and to provide for the assessment of the cost of such temporary sidewalks on the property in front of which such sidewalks shall be laid.

**Source:** Laws 1879, § 69, VI, p. 211; Laws 1881, c. 23, § 8, VI, p. 173; Laws 1885, c. 20, § 1, VI, p. 164; Laws 1887, c. 12, § 1, VI, p. 292; Laws 1905, c. 29, § 1, p. 255; R.S.1913, § 5112; C.S.1922, § 4285; C.S.1929, § 17-434; R.S.1943, § 17-523; Laws 2017, LB133, § 140. Effective date August 24, 2017.

**17-524 Streets and sidewalks; improvements; assessments; how made; collection.**

Assessments made under sections 17-509 to 17-523 shall be made and assessed in the following manner:

(1) Such assessment shall be made by the city council or village board of trustees at a special meeting, by a resolution, taking into account the benefits

derived or injuries sustained in consequence of such improvements, and the amount charged against the same, which, with the vote, shall be recorded in the minutes. Notice of the time of holding such meeting and the purpose for which it is to be held shall be published in a legal newspaper in or of general circulation in the city or village at least four weeks before the meeting is held or, in lieu of such notice, personal service may be made upon persons owning or occupying property to be assessed; and

(2) All such assessments shall be known as special assessments for improvements, shall be levied and collected as a separate tax, in addition to the taxes for general revenue purposes, and shall be placed on the tax roll for collection, subject to the same penalties and collected in like manner as other city or village taxes.

**Source:** Laws 1879, § 69, VII, p. 212; Laws 1881, c. 23, § 8, VII, p. 174; Laws 1885, c. 20, § 1, VII, p. 164; Laws 1887, c. 12, § 1, VII, p. 292; R.S.1913, § 5113; C.S.1922, § 4286; C.S.1929, § 17-435; R.S.1943, § 17-524; Laws 1955, c. 40, § 1, p. 155; Laws 2017, LB133, § 141.

Effective date August 24, 2017.

#### **17-525 Occupation tax; power to levy; exceptions.**

Cities of the second class and villages shall have power to raise revenue by levying and collecting a license tax on any occupation or business within the limits of the city or village and regulate such occupation or business by ordinance. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The occupation tax shall be imposed in the manner provided in section 18-1208, except that section 18-1208 does not apply to an occupation tax subject to section 86-704. All such taxes shall be uniform in respect to the classes upon which they are imposed. All scientific and literary lectures and entertainments shall be exempt from such taxation, as well as concerts and other musical entertainments given exclusively by the citizens of the city or village.

**Source:** Laws 1879, § 69, VIII, p. 212; Laws 1881, c. 23, § 8, VIII, p. 174; Laws 1885, c. 20, § 1, VIII, p. 165; Laws 1887, c. 12, § 1, VIII, p. 293; R.S.1913, § 5114; C.S.1922, § 4287; C.S.1929, § 17-436; R.S.1943, § 17-525; Laws 2012, LB745, § 6; Laws 2014, LB474, § 5; Laws 2017, LB133, § 142.

Effective date August 24, 2017.

#### **17-526 Dogs and other animals; license tax; enforcement.**

Cities of the second class and villages may, by ordinance, impose a license tax in an amount which shall be determined by the governing body of such city of the second class or village for each dog or other animal, on the owners and harborers of dogs and other animals, and enforce such license tax by appropriate penalties, and cause the destruction of any dog or other animal, for which the owner or harborer shall refuse or neglect to pay such license tax. Any licensing provision shall comply with subsection (2) of section 54-603 for



service animals. Such municipality may regulate, license, or prohibit the running at large of dogs and other animals and guard against injuries or annoyances from such animals and authorize the destruction of such animals when running at large contrary to the provisions of any ordinance.

**Source:** Laws 1879, § 69, X, p. 213; Laws 1881, c. 23, § 8, X, p. 175; Laws 1885, c. 20, § 1, X, p. 165; Laws 1887, c. 12, § 1, X, p. 294; Laws 1899, c. 14, § 1, p. 79; R.S.1913, § 5116; C.S.1922, § 4289; C.S.1929, § 17-438; R.S.1943, § 17-526; Laws 1959, c. 59, § 2, p. 253; Laws 1976, LB 515, § 1; Laws 1981, LB 501, § 4; Laws 1997, LB 814, § 5; Laws 2008, LB806, § 4; Laws 2017, LB133, § 143.

Effective date August 24, 2017.

**17-527 Elections; rules governing; power to prescribe.**

Cities of the second class and villages shall have power to prescribe the manner of conducting all municipal elections and the return of such elections and for holding special elections for any purpose provided by law.

**Source:** Laws 1879, § 69, XI, p. 213; Laws 1881, c. 23, § 8, XI, p. 175; Laws 1885, c. 20, § 1, XI, p. 166; Laws 1887, c. 12, § 1, XI, p. 294; R.S.1913, § 5117; C.S.1922, § 4290; C.S.1929, § 17-439; R.S.1943, § 17-527; Laws 1959, c. 60, § 55, p. 272; Laws 2017, LB133, § 144.

Effective date August 24, 2017.

**17-528 Electricity; franchises and contracts; tax; sale by public service company to city.**

Cities of the second class and villages shall have power to grant a franchise, for a period of not to exceed twenty-five years, to any person, company, corporation, or association, whether publicly or privately owned, to furnish light and power to the residents, citizens, and corporations doing business in such city or village, and to make contracts, for a period of not to exceed five years, with such person, company, or association for the furnishing of light for the streets, lanes, alleys, and other public places and property of such city or village, and the inhabitants of such city or village, the furnishing of electricity to pump water or similar services for such city or village, and to levy a tax for the purpose of paying the costs of such lighting of streets, lanes, alleys, and other public places and property of such city or village. No public service company, whether publicly or privately owned, shall sell to any city of the second class or village, now generating its own electric current for all or the major portion of its electric requirements, unless first authorized so to do by a vote of the electors of such city or village, in the same manner and subject to the same conditions as are set forth in section 18-412. If no tax or issuance of bonds is required, any city of the second class or village may by resolution of the city council or village board of trustees contract for the furnishing of electricity at retail to such city or village, or to any electric plant within such city or village, with any public power district or an electric cooperative which cooperative has an approved retail service area adjoining such city or village.

**Source:** Laws 1879, § 69, XIV, p. 214; Laws 1881, c. 23, § 8, XIV, p. 176; Laws 1885, c. 20, § 1, XIV, p. 166; Laws 1887, c. 12, § 1, XIV, p. 295; Laws 1895, c. 16, § 1, p. 111; Laws 1905, c. 27, § 1, p. 252;

R.S.1913, § 5118; C.S.1922, § 4291; C.S.1929, § 17-440; Laws 1943, c. 28, § 2, p. 124; R.S.1943, § 17-528; Laws 1965, c. 58, § 2, p. 266; Laws 1969, c. 83, § 2, p. 419; Laws 2017, LB133, § 145.

Effective date August 24, 2017.

**17-528.02 Gas franchises; length; conditions; tax.**

Cities of the second class and villages shall have power to grant a franchise, subject to the conditions of this section and section 17-528.03, for a period not exceeding twenty-five years to any person, company, or association, whether publicly or privately owned, and to his, her, or its assigns, to lay and maintain gas mains, pipes, service, and all other necessary structures in the streets, lanes, alleys, and public places of such city or village for the purpose of transporting gas on, under, or along any streets, lanes, alleys, and public places of such city or village and for furnishing gas to the inhabitants of such city or village. The city or village may make any reasonable regulation with reference to any person, firm, or corporation holding such franchise as to charges for such gas. Such city or village is authorized to contract, lease, or rent the gas plant from any person, firm, or corporation furnishing gas within such city or village. Such contract, lease, or rental agreement shall not be for a period longer than five years. Such city or village may levy a tax to pay the rent under such lease or to pay for any gas used for street lighting or for other necessary purposes.

**Source:** Laws 1879, § 39, VI, p. 201; Laws 1881, c. 24, § 1, p. 195; Laws 1905, c. 27, § 1, p. 252; Laws 1911, c. 18, § 1, p. 135; R.S.1913, § 5019; Laws 1919, c. 45, § 1, p. 129; C.S.1922, § 4188; C.S. 1929, § 17-127; Laws 1943, c. 28, § 1, p. 123; R.S.1943, § 17-125; Laws 1957, c. 33, § 1(1), p. 196; Laws 1959, c. 49, § 1, p. 237; Laws 2017, LB133, § 146.

Effective date August 24, 2017.

**17-528.03 Electricity franchises; length; conditions; election, when required; exceptions.**

Cities of the second class and villages shall have power to grant a franchise subject to the conditions of this section or section 17-528.02. Such franchise may run for a period not exceeding twenty-five years, and it may be granted to any person, company, or association, whether publicly or privately owned, and to his, her, or its assigns. Such franchise may permit the person, company, or association to erect and maintain poles, lines, wires, and conductors for electricity in the streets, lanes, alleys, and public places of such city or village and for furnishing electricity to the inhabitants of such city or village. Such franchise may establish the amount that may be charged during such period for electricity and provide that such city or village may, after such period, make any reasonable regulation with reference to any person, firm, or corporation holding such franchise either as to charges for electricity or otherwise. Such city or village is further authorized to contract, lease, or rent the plant, from any person, firm, or corporation, furnishing electricity, within such city or village, for power or the lighting of streets, lanes, alleys, and public places of such city or village, but not for a period longer than five years. Such city or village may levy a tax for the purpose of paying the cost of such lighting of streets, lanes, alleys, or public places of such city or village or to pay the rent

under such lease. No public service company, whether publicly or privately owned, shall sell to any city of the second class or village, generating its own electric energy for all or a major portion of its electric requirements, unless first authorized so to do by a vote of the electors of such city or village, in the same manner and subject to the same conditions as are set forth in section 18-412. If no tax or issuance of bonds is required, any city of the second class or village may by resolution of the city council or village board of trustees contract for the furnishing of electricity at retail to such city or village, or to any electric plant within such city or village, with any public power district or an electric cooperative which cooperative has an approved retail service area adjoining such city or village.

**Source:** Laws 1879, § 39, VI, p. 201; Laws 1881, c. 24, § 1, p. 195; Laws 1905, c. 27, § 1, p. 252; Laws 1911, c. 18, § 1, p. 135; R.S.1913, § 5019; Laws 1919, c. 45, § 1, p. 129; C.S.1922, § 4188; C.S. 1929, § 17-127; Laws 1943, c. 28, § 1, p. 123; R.S.1943, § 17-125; Laws 1957, c. 33, § 1(2), p. 197; Laws 1965, c. 58, § 3, p. 267; Laws 1969, c. 83, § 3, p. 419; Laws 2017, LB133, § 147. Effective date August 24, 2017.

**17-529 Watercourses; aqueducts; wells; regulation.**

Cities of the second class and villages shall have power (1) to establish and alter the channel of watercourses and to wall them and cover them over, (2) to establish, regulate, and provide for the filling of wells, cisterns and windmills, aqueducts, and reservoirs of water, and (3) to erect and maintain a dike or dikes as protection against flood or surface waters.

**Source:** Laws 1879, § 69, XV, p. 214; Laws 1881, c. 23, § 8, XV, p. 176; Laws 1885, c. 20, § 1, XV, p. 167; Laws 1887, c. 12, § 1, XV, p. 295; Laws 1893, c. 8, § 1, p. 133; Laws 1903, c. 21, § 1, p. 250; Laws 1905, c. 30, § 1, p. 256; Laws 1907, c. 17, § 1, p. 126; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 270; Laws 1919, c. 48, § 1, p. 136; Laws 1919, c. 52, § 1, p. 150; Laws 1919, c. 46, § 2, p. 131; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 156; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 141; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-529; Laws 1947, c. 35, § 1(1), p. 146; Laws 2017, LB133, § 148. Effective date August 24, 2017.

**17-529.01 Dikes; erection and maintenance; eminent domain; procedure.**

In connection with the power to establish and alter the channel of watercourses and the power to erect and maintain dikes against flood waters and surface waters, cities of the second class and villages shall be empowered to exercise the power of eminent domain to acquire easements and rights-of-way over real estate situated either within or not more than two miles outside the corporate limits of such city or village, for the purpose of constructing either a ditch or a dike to prevent flooding of such city or village. The procedure for taking and condemning real estate for such purpose shall be exercised in the manner set forth in sections 76-704 to 76-724. In connection with such condemnation proceedings, the city or village shall be liable not only for the land actually taken but for consequential damages to other lands damaged by the construction of such improvement and shall be authorized to pay such

§ 17-529.01

CITIES OF THE SECOND CLASS AND VILLAGES

damages out of any available funds on hand or by the issuance of bonds as provided by law.

**Source:** Laws 1947, c. 35, § 1(2), p. 146; Laws 1949, c. 23, § 1, p. 95; Laws 1951, c. 101, § 56, p. 473; Laws 1953, c. 287, § 16, p. 939; Laws 1965, c. 66, § 1, p. 286; Laws 2017, LB133, § 149. Effective date August 24, 2017.

Cross References

For additional flood control powers and duties of cities of the second class and villages, see section 23-320.07.  
For funding provisions, see section 17-529.08.

**17-529.02 Flood control projects; cooperation with United States; consent to requirements.**

Cities of the second class and villages may cooperate with the United States Government in protecting against floods and enter into agreements with such government for that purpose. Such cities and villages may, in order to obtain federal funds for protecting against floods, consent to requirements of the Congress of the United States that such city or village (1) provide without cost to the United States all lands, easements, and rights-of-way necessary for the construction of flood control projects, (2) hold and save the United States free and harmless from damages due to the construction works, and (3) maintain and operate all the flood control works after completion in accordance with regulations prescribed by the Secretary of the Army of the United States.

**Source:** Laws 1947, c. 35, § 1(3), p. 146; Laws 1972, LB 1047, § 1; Laws 2017, LB133, § 150. Effective date August 24, 2017.

**17-529.03 Flood control projects; removal to another site; definitions.**

For purposes of sections 17-529.03 to 17-529.07:

- (1) The term old city or village shall mean a city of the second class or village at its old location, and is not used in the sense that it is another or different city or village after its removal to a new site;
- (2) The term new city or village shall mean a city of the second class or village at its new location, and is not used in the sense that it is another or different city or village than it was before its removal from an old site;
- (3) The term county board shall mean the board of county commissioners or board of supervisors of a county; and
- (4) The term governing board shall mean the city council of a city of the second class, or the village board of trustees.

**Source:** Laws 1947, c. 44, § 1, p. 160; Laws 2017, LB133, § 151. Effective date August 24, 2017.

**17-529.05 Flood control projects; removal to another site; petition; contents; order for hearing; notice.**

Whenever a petition is filed with the county clerk of any county, signed by either the governing board of any city of the second class or village or by one hundred or more electors of any city of the second class or village within such county setting forth: (1) That the United States Government has acquired, or is about to acquire, by purchase or eminent domain or both, the entire site upon which such city or village is located; (2) that the petitioners desire such city or

village removed to another site and the corporate identity retained; (3) that a new site has been acquired, or contracted to be acquired, to which the old city or village can be removed; (4) that the petitioners intend to become residents of the new city or village when it is removed to the proposed new site; and (5) offer to pay all costs of the proceedings to effectuate such removal, the county board of such county shall enter an order setting such petition down for hearing not less than thirty nor more than sixty days after the filing of such petition and shall cause notice of such hearing to be given by publication three successive weeks prior to the hearing in a legal newspaper in or of general circulation in such county.

**Source:** Laws 1947, c. 44, § 3, p. 160; Laws 2017, LB133, § 152.  
Effective date August 24, 2017.

**17-529.06 Flood control projects; removal to another site; hearing; entry of order.**

Upon the hearing held pursuant to section 17-529.05, if the county board finds that the statements set forth in the petition are true and that it is in the best interests of the old city or village to authorize such removal, the county board shall enter an order granting such petition.

**Source:** Laws 1947, c. 44, § 4, p. 161; Laws 2017, LB133, § 153.  
Effective date August 24, 2017.

**17-529.07 Flood control projects; removal to another site; order; effect.**

The order granting a petition under section 17-529.05 shall have the following effect:

(1) The name and corporate identity of the old city or village shall be retained by the new city or village.

(2) The officers of the old city or village shall continue to be the officers of the new city or village until their successors are elected and qualified at the time and in the manner provided by law.

(3) The funds and property of the old city or village shall be retained by and belong to the new city or village.

(4) The proceeds from the sale or condemnation of municipally owned property of the old city or village shall accrue and be paid to the new city or village, except that any outstanding bonded indebtedness of or judgments against the old city or village shall be paid to the holders of such bonds or judgments who shall demand payment thereof and are not willing to permit such bonds or judgments to continue as an indebtedness due from the new city or village.

(5) The ordinances of the old city or village shall continue in full force and effect as the ordinances of the new city or village.

(6) The proceeds from the sale or condemnation of any public school buildings and grounds situated within the old city or village shall be used for the purchase and construction of a new school building and grounds at the new site, if the new site is located within the same school district as the old site, and if not, the proceeds shall be apportioned between the school district in which the new city or village is located and the school district in which the old city or village was located in the proportion that the actual valuation of the property purchased and condemned by the United States Government in such school

district bears to the valuation of the property remaining in such school district not condemned or purchased by the United States Government.

(7) The proceeds from the sale or condemnation of any public buildings and grounds of any township in which the old city or village was located shall be used for the purchase and construction of similar buildings and grounds at the new site, if the new site is located within the same township as the old site, and if not, the proceeds shall be apportioned between the township in which the new city or village is located and the township in which the old city or village was located in the proportion that the actual valuation of the property purchased and condemned by the United States Government in such township bears to the actual valuation of the property remaining in such township not condemned or purchased by the United States Government.

**Source:** Laws 1947, c. 44, § 5, p. 161; Laws 1979, LB 187, § 51; Laws 2017, LB133, § 154.  
Effective date August 24, 2017.

**17-529.08 Flood control projects; bonds; interest; election; tax; levy.**

(1) For the purpose of paying the costs and expenses in implementing sections 17-529.01 and 17-529.02, cities of the second class and villages may borrow money or issue bonds in an amount not to exceed five percent of the taxable valuation of all the taxable property within such city or village according to the most recent assessment.

(2) Such cities or villages may levy and collect a general tax in the same manner as other municipal taxes are levied and collected in an amount sufficient to pay the interest and principal of the bonds referred to in subsections (1) and (3) of this section, as the same mature, upon the taxable value of all the taxable property within such city or village as shown upon the assessment roles, in addition to the sum authorized to be levied under section 17-506.

(3) No money shall be borrowed or bonds issued as referred to in subsections (1) and (2) of this section unless authorized by a majority of the legal votes cast for and against the proposition at an election held for that purpose. Notice of the election shall be given by publication in a legal newspaper in or of general circulation in such city or village for at least two weeks prior to the date of such election. The bonds shall be the bonds of such city or village, shall become due in not to exceed twenty years from their date of issue, and shall draw interest payable semiannually or annually.

**Source:** Laws 1965, c. 73, § 1, p. 296; Laws 1969, c. 51, § 46, p. 300; Laws 1971, LB 534, § 14; Laws 1979, LB 187, § 52; Laws 1992, LB 719A, § 53; Laws 2017, LB133, § 155.  
Effective date August 24, 2017.

**17-530 Waterworks; franchises; terms.**

Cities of the second class and villages shall have power to make contracts with and authorize any person, company, or corporation to erect and maintain a system of waterworks and water supply, and to give such contractors the exclusive privilege for a term not exceeding twenty-five years to lay down in the streets and alleys of such city or village water mains and supply pipes, and to furnish water to such city or village, and the residents of such cities or villages, under such regulations as to price, supply, and rent of water meters, as the city council or village board of trustees may from time to time prescribe by

ordinance for the protection of the city or village. The right to supervise and control such person, company, or corporation shall not be waived or set aside.

**Source:** Laws 1881, c. 23, § 8, XV, p. 176; Laws 1885, c. 20, § 1, XV, p. 167; Laws 1887, c. 12, § 1, XV, p. 295; Laws 1893, c. 8, § 1, p. 133; Laws 1903, c. 21, § 1, p. 250; Laws 1905, c. 30, § 1, p. 256; Laws 1907, c. 17, § 1, p. 126; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 271; Laws 1919, c. 46, § 2, p. 131; Laws 1919, c. 48, § 1, p. 137; Laws 1919, c. 52, § 1, p. 150; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 157; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 141; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-530; Laws 2017, LB133, § 156.

Effective date August 24, 2017.

#### **17-531 Waterworks; acquisition or construction authorized.**

Cities of the second class and villages shall have power to provide for the purchase of fire-extinguishing apparatus and for a supply of water for the purpose of fire protection and public use and for the use of the inhabitants of such cities and villages by the purchase, erection, or construction of a system of waterworks, water mains, or extensions of any system of waterworks established or situated in whole or in part within such city or village, and for maintaining such fire-extinguishing apparatus or system of waterworks.

**Source:** Laws 1885, c. 20, § 1, XV, p. 167; Laws 1887, c. 12, § 1, XV, p. 296; Laws 1893, c. 8, § 1, p. 133; Laws 1903, c. 21, § 1, p. 250; Laws 1905, c. 30, § 1, p. 256; Laws 1907, c. 17, § 1, p. 126; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 271; Laws 1919, c. 48, § 1, p. 137; Laws 1919, c. 52, § 1, p. 151; Laws 1919, c. 46, § 2, p. 131; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 157; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 142; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-531; Laws 2017, LB133, § 157.

Effective date August 24, 2017.

#### **17-532 Waterworks; private companies; compulsory connections.**

Cities of the second class and villages shall have power to require any person, firm, or corporation operating any public water supply in such city or village to connect with and furnish water to such city or village from its mains located within such city or village, and to provide by ordinance for connections of such mains with the mains or portion of water system constructed or operated by such city or village, under such regulations and under such penalties as may be prescribed by ordinance.

**Source:** Laws 1907, c. 17, § 1, p. 126; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 271; Laws 1919, c. 48, § 1, p. 137; Laws 1919, c. 52, § 1, p. 151; Laws 1919, c. 46, § 2, p. 131; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 157; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 142; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-532; Laws 2017, LB133, § 158.

Effective date August 24, 2017.

#### **17-533 Waterworks; construction; bids.**

All contracts for the construction of any work pursuant to sections 17-530 to 17-532, or any portion of such work, shall be let to the lowest responsible bidder, and upon not less than twenty days' published notice of the terms and conditions upon which the contract is to be let having been given by publication in a legal newspaper in or of general circulation in such city or village. In all cases the city council or village board of trustees shall have the right to reject any and all bids that may not be satisfactory.

**Source:** Laws 1881, c. 23, § 8, XV, p. 177; Laws 1885, c. 20, § 1, XV, p. 167; Laws 1887, c. 12, § 1, XV, p. 296; Laws 1893, c. 8, § 1, p. 133; Laws 1903, c. 21, § 1, p. 250; Laws 1905, c. 30, § 1, p. 256; Laws 1907, c. 17, § 1, p. 127; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 271; Laws 1919, c. 48, § 1, p. 137; Laws 1919, c. 52, § 1, p. 151; Laws 1919, c. 46, § 2, p. 131; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 157; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 142; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-533; Laws 2017, LB133, § 159.  
Effective date August 24, 2017.

**17-534 Waterworks; purchase or construction; bonds; interest; limitation; tax; approval of electors required; exception.**

(1) Cities of the second class and villages may borrow money or issue bonds in an amount not to exceed twelve percent of the taxable valuation of all the taxable property within such city or village according to the most recent assessment for the purchase of fire-extinguishing apparatus and for the purchase, construction, and maintenance of such waterworks, mains, portion, or extension of any system of waterworks or water supply or to pay for water furnished such city or village under contract, when authorized as is provided for by subsection (3) of this section.

(2) Such cities or villages may levy and collect a general tax in the same manner as other municipal taxes are levied and collected in an amount sufficient to pay the interest and principal of the bonds referred to in subsections (1) and (3) of this section, as the same mature, upon the taxable value of all the taxable property within such city or village, in addition to the sum authorized to be levied under section 17-506. All taxes raised by such a levy shall be retained in a fund known as the water fund.

(3) No money shall be borrowed or bonds issued as referred to in subsections (1) and (2) of this section unless authorized by a majority of the legal voters of such city or village voting on the proposition at an election held for that purpose. Notice of the election shall be given by publication in a legal newspaper in or of general circulation in such city or village for at least two weeks prior to the date of such election. The requirement of this section of a vote of the electors shall not apply when the proceeds of the bonds will be used solely for the maintenance, extension, improvement, or enlargement of any existing system of waterworks or water supply owned by the city or village and the bonds have been ordered issued by a vote of not less than three-fourths of all the city council or village board of trustees as the case may be. The bonds shall be the bonds of such city or village and be called water bonds. The bonds shall become due in not to exceed forty years from the date of issue and shall draw interest payable semiannually or annually.

**Source:** Laws 1881, c. 23, § 8, XV, p. 177; Laws 1885, c. 20, § 1, XV, p. 168; Laws 1887, c. 20, § 1, XV, p. 296; Laws 1893, c. 8, § 1, p.



134; Laws 1903, c. 21, § 1, p. 250; Laws 1905, c. 30, § 1, p. 257; Laws 1907, c. 17, § 1, p. 127; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 271; Laws 1919, c. 48, § 1, p. 138; Laws 1919, c. 52, § 1, p. 151; Laws 1919, c. 46, § 2, p. 132; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 158; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 142; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-534; Laws 1945, c. 30, § 1, p. 147; Laws 1949, c. 24, § 1, p. 96; Laws 1955, c. 50, § 1, p. 169; Laws 1969, c. 51, § 47, p. 301; Laws 1971, LB 83, § 1; Laws 1971, LB 982, § 1; Laws 1979, LB 187, § 53; Laws 1992, LB 719A, § 54; Laws 2017, LB133, § 160.

Effective date August 24, 2017.

**17-535 Waterworks; construction and maintenance; acquisition of land beyond extraterritorial zoning jurisdiction; procedure.**

For the purpose of erecting, constructing, locating, maintaining, or supplying waterworks, mains, portion, or extension of any system of waterworks or water supply as provided in sections 17-530 to 17-532, any city of the second class or village may go beyond its extraterritorial zoning jurisdiction and may take, hold, or acquire rights, property, and real estate by purchase or otherwise, and may for this purpose, take, hold, and condemn any and all necessary property. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

**Source:** Laws 1881, c. 23, § 8, XV, p. 178; Laws 1885, c. 20, § 1, XV, p. 169; Laws 1887, c. 12, § 1, XV, p. 297; Laws 1893, c. 8, § 1, p. 135; Laws 1903, c. 21, § 1, p. 251; Laws 1905, c. 30, § 1, p. 257; Laws 1907, c. 17, § 1, p. 128; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 272; Laws 1919, c. 48, § 1, p. 138; Laws 1919, c. 52, § 1, p. 152; Laws 1919, c. 46, § 2, p. 132; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 159; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 143; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-535; Laws 1951, c. 101, § 57, p. 473; Laws 2017, LB133, § 161.

Effective date August 24, 2017.

**17-536 Waterworks; water supply; pollution; power to prevent.**

The jurisdiction of a city of the second class or village to prevent any pollution or injury to the stream or source of water for the supply of waterworks constructed under sections 17-530 to 17-532 shall extend fifteen miles beyond its corporate limits.

**Source:** Laws 1881, c. 23, § 8, XV, p. 178; Laws 1885, c. 20, § 1, XV, p. 169; Laws 1887, c. 12, § 1, XV, p. 298; Laws 1893, c. 8, § 1, p. 135; Laws 1903, c. 21, § 1, p. 251; Laws 1905, c. 30, § 1, p. 258; Laws 1907, c. 17, § 1, p. 128; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 272; Laws 1919, c. 48, § 1, p. 138; Laws 1919, c. 52, § 1, p. 152; Laws 1919, c. 46, § 2, p. 133; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 159; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 143; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-536; Laws 2017, LB133, § 162.

Effective date August 24, 2017.

**17-537 Waterworks; rules and regulations.**

The city council of a city of the second class or village board of trustees shall have power to make and enforce all necessary rules and regulations in the construction, use, and management of waterworks, mains, portion, or extension of any system of waterworks or water supply and for the use of the water from such system.

**Source:** Laws 1881, c. 23, § 8, XV, p. 178; Laws 1885, c. 20, § 1, XV, p. 169; Laws 1887, c. 12, § 1, XV, p. 298; Laws 1893, c. 8, § 1, p. 135; Laws 1903, c. 21, § 1, p. 251; Laws 1905, c. 30, § 1, p. 258; Laws 1907, c. 17, § 1, p. 128; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 272; Laws 1919, c. 48, § 1, p. 139; Laws 1919, c. 52, § 1, p. 152; Laws 1919, c. 46, § 2, p. 133; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 159; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 143; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-537; Laws 2017, LB133, § 163.

Effective date August 24, 2017.

**17-538 Waterworks; use of water; rates or rental; collection.**

Cities of the second class and villages shall have the right and power to tax, assess, and collect from the inhabitants of such cities and villages such tax, rent, or rates for the use and benefit of water used or supplied to them by such waterworks, mains, portion, or extension of any system of waterworks or water supply as the city council or village board of trustees shall deem just or expedient. All such water rates, taxes, or rent shall be a lien upon the premises, or real estate, upon or for which such water is used or supplied; and such taxes, rents, or rates shall be paid and collected and such lien enforced in such manner as the city council or village board of trustees shall provide by ordinance.

**Source:** Laws 1881, c. 23, § 8, XV, p. 179; Laws 1885, c. 20, § 1, XV, p. 169; Laws 1887, c. 12, § 1, XV, p. 298; Laws 1893, c. 8, § 1, p. 135; Laws 1903, c. 21, § 1, p. 252; Laws 1905, c. 30, § 1, p. 258; Laws 1907, c. 17, § 1, p. 128; R.S.1913, § 5118; Laws 1917, c. 103, § 1, p. 273; Laws 1919, c. 48, § 1, p. 139; Laws 1919, c. 52, § 1, p. 152; Laws 1919, c. 46, § 2, p. 133; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 159; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 143; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-538; Laws 2017, LB133, § 164.

Effective date August 24, 2017.

**17-539 Waterworks; construction; cost; special assessments.**

The expense of erecting, locating, and constructing reservoirs and hydrants for the purpose of fire protection and the expense of constructing and laying water mains, pipes, or such parts of such mains or pipes as may be just and lawful, may be assessed upon and collected from the property and real estate specially benefited by such reservoirs, hydrants, mains, or pipes, if any, as a special assessment in such manner as may be provided for the making of special assessments for other public improvements in cities of the second class and villages.

**Source:** Laws 1881, c. 23, § 8, XV, p. 179; Laws 1885, c. 20, § 1, XV, p. 170; Laws 1887, c. 12, § 1, XV, p. 298; Laws 1893, c. 8, § 1, p. 135; Laws 1903, c. 21, § 1, p. 252; Laws 1905, c. 30, § 1, p. 258;

Laws 1907, c. 17, § 1, p. 128; 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. 133; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 159; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 143; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-539; Laws 2015, LB361, § 32; Laws 2017, LB133, § 165.  
Effective date August 24, 2017.

**17-540 Waterworks; income; how used; surplus, investment.**

All income received by cities of the second class or villages from public utilities and from the payment and collection of water taxes, rents, rates, or assessments shall be applied to the payment of running expenses, interest on bonds or money borrowed, and the erection and construction of public utilities. If there is any surplus income, such income shall be placed into a sinking fund for the payment of public utility bonds or for the improvements of the works, or into the general fund as the city council or village board of trustees may direct. The surplus remaining, if any, may, if the city council or village board of trustees so directs, be invested in interest-bearing bonds or obligations of the United States.

**Source:** Laws 1881, c. 23, § 8, XV, p. 179; 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. 258; 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. 133; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 160; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 144; C.S.Supp.,1941, § 17-441; Laws 1943, c. 27, § 1(1), p. 121; R.S.1943, § 17-540; Laws 1969, c. 93, § 1, p. 459; Laws 2017, LB133, § 166.

Effective date August 24, 2017.

**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 a city of the second class or village, the mayor of such city or the chairperson of the village board of trustees shall nominate and, by and with the advice and consent of the city council or village board of trustees, 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 village 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 village 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 city council or the village 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 city council or village board of trustees or executed by a corporate surety.

The water commissioner, subject to the supervision of the mayor and city council or village 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 of the second class or village where no board of public works exists, and such city or village has other public utilities than its waterworks system, the mayor and city council or the village board of trustees 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; Laws 2017, LB133, § 167.

Effective date August 24, 2017.

#### **17-542 Waterworks; rates; regulation.**

The city council of a city of the second class or village board of trustees is hereby expressly given the power to fix the rates to be paid by water consumers of such city or village for the use of water from the waterworks of such city or village, including the power to require, as a condition precedent to the use of such water, the furnishing of water meters at the expense of such water consumers as may be provided by ordinance of such city or village.

**Source:** Laws 1881, c. 23, § 8, XV, p. 181; Laws 1885, c. 20, § 1, XV, p. 171; Laws 1887, c. 12, § 1, XV, p. 300; Laws 1893, c. 8, § 1, p. 137; Laws 1903, c. 21, § 1, p. 253; Laws 1905, c. 30, § 1, p. 259; Laws 1907, c. 17, § 1, p. 129; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 274; Laws 1919, c. 48, § 1, p. 140; Laws 1919, c. 52, § 1, p. 154; Laws 1919, c. 46, § 2, p. 134; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 161; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 145; Laws 1937, c. 33, § 1, p. 158; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-542; Laws 2017, LB133, § 168.

Effective date August 24, 2017.

#### **17-543 Waterworks; water commissioner; duty to account; report; salary; public works commissioner; duties.**

The water commissioner in a city of the second class or village shall collect all money received by such city or village on account of its system of waterworks and shall faithfully account for and pay over such money to the city treasurer or village treasurer, taking his or her receipt for such money in duplicate and filing a receipt with the city clerk or village clerk. The water commissioner shall make a detailed report to the city council or village board of trustees, at least once every six months, of the condition of the water system, of all mains, pipes, hydrants, reservoirs, and machinery, and such improvements, repairs, and extension of such system as he or she may think proper. The report shall show the amount of receipts and expenditures on account of such system for the preceding six months. No money shall be expended for improvements, repairs, or extension of the waterworks system except upon recommendation of the water commissioner. The water commissioner shall perform such other duties as may be prescribed by ordinance. The water commissioner shall be paid such salary as the city council or village board of trustees may by ordinance provide, and upon his or her written recommendation, the mayor and city council or chairperson and village board of trustees shall employ such laborers and clerks as deemed necessary. Neither the mayor nor any member of the city council in a city of the second class shall be eligible to the office of water commissioner during the term for which he or she was elected. If the city or village involved owns public utilities other than the waterworks system, and the water commissioner has been designated by ordinance as the public works commissioner under the authority of section 17-541, then all provisions of this section in reference to a water commissioner shall apply to the public works commissioner.

**Source:** Laws 1881, c. 23, § 8, XV, p. 181; Laws 1885, c. 20, § 1, XV, p.172; Laws 1887, c. 12, § 1, XV, p. 300; Laws 1893, c. 8, § 1, p. 137; Laws 1903, c. 21, § 1, p. 253; Laws 1905, c. 30, § 1, p. 259; Laws 1907, c. 17, § 1, p. 129; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 274; Laws 1919, c. 48, § 1, p. 140; Laws 1919, c. 52, § 1, p. 154; Laws 1919, c. 46, § 2, p. 134; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 161; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 145; Laws 1937, c. 33, § 1, p. 159; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-543; Laws 1961, c. 51, § 2, p. 194; Laws 1983, LB 310, § 1; Laws 2017, LB133, § 169.  
Effective date August 24, 2017.

#### **17-545 Waterworks; additional tax; when authorized.**

Every city of the second class and village in the State of Nebraska which owns its own water plant and a system of hydrants in connection with such water plant is hereby authorized and empowered to provide a fund upon the presentation to the city council or village board of trustees of a petition signed by sixty percent of the legal voters of the city or village, in addition to the general fund of such city or village, by making a levy at the time authorized by law, not to exceed two and one-tenth cents on each one hundred dollars upon the taxable value of all the taxable property of the city or village, for the purpose of paying the expense or aiding in paying the expense of maintaining such system of hydrants and pumping and supplying through them water for public purposes.

**Source:** Laws 1915, c. 217, § 1, p. 486; C.S.1922, § 4294; C.S.1929, § 17-443; R.S.1943, § 17-545; Laws 1953, c. 287, § 17, p. 939;

Laws 1979, LB 187, § 54; Laws 1992, LB 719A, § 55; Laws 2017, LB133, § 170.  
Effective date August 24, 2017.

**17-546 Waterworks; additional tax; provision cumulative.**

The right and power to provide the fund mentioned in section 17-545 for purposes of paying the expense of maintaining a system of hydrants shall in no way prevent cities of the second class and villages from providing in whole or in part for the expense of such hydrants, and of pumping and supplying through them water for public purposes, in any other manner provided by law.

**Source:** Laws 1915, c. 217, § 2, p. 486; C.S.1922, § 4295; C.S.1929, § 17-444; R.S.1943, § 17-546; Laws 2017, LB133, § 171.  
Effective date August 24, 2017.

**17-547 Animals running at large; regulation.**

Cities of the second class and villages shall have power to regulate the running at large of cattle, hogs, horses, mules, sheep, goats, dogs, and other animals and to cause such animals as may be running at large to be impounded and sold to discharge the cost and penalties provided for the violation of such regulations and the expense of impounding and keeping such animals and of such sales.

**Source:** Laws 1879, § 69, XVI, p. 214; Laws 1881, c. 23, § 8, XVI, p. 182; Laws 1885, c. 20, § 1, XVI, p. 173; Laws 1887, c. 12, § 1, XVI, p. 301; R.S.1913, § 5121; C.S.1922, § 4296; C.S.1929, § 17-445; R.S.1943, § 17-547; Laws 2017, LB133, § 172.  
Effective date August 24, 2017.

**17-548 Pounds; establishment.**

Cities of the second class and villages shall have power to provide for the erection of all needful pens and pounds within or without their corporate limits, to appoint and compensate keepers of such pens and pounds, and to establish and enforce rules governing such pens and pounds.

**Source:** Laws 1879, § 69, XVII, p. 214; Laws 1881, c. 23, § 8, XVII, p. 182; Laws 1885, c. 20, § 1, XVII, p. 173; Laws 1887, c. 12, § 1, XVII, p. 301; R.S.1913, § 5122; C.S.1922, § 4297; C.S.1929, § 17-446; R.S.1943, § 17-548; Laws 2017, LB133, § 173.  
Effective date August 24, 2017.

**17-549 Fire prevention; regulations.**

Cities of the second class and villages shall have power to regulate the construction of and order the suppression and cleaning of fireplaces, chimneys, stoves, stovepipes, ovens, boilers, kettles, forges, or any apparatus used in any building, business, or enterprise which may be dangerous in causing or promoting fires and to prescribe the limits within which no dangerous or obnoxious and offensive business or enterprise may be conducted.

**Source:** Laws 1879, § 69, XVIII, p. 214; Laws 1881, c. 23, § 8, XVIII, p. 182; Laws 1885, c. 20, § 1, XVIII, p. 173; Laws 1887, c. 12, § 1,

XVIII, p. 301; R.S.1913, § 5123; C.S.1922, § 4298; C.S.1929, § 17-447; R.S.1943, § 17-549; Laws 2017, LB133, § 174.  
Effective date August 24, 2017.

**17-550 Buildings; construction; regulation.**

Cities of the second class and villages shall have power to prescribe and alter limits within which no buildings shall be constructed except of brick, stone, or other incombustible material, with fireproof roof. After such limits are established, no special permits shall be given for the erection of buildings of combustible material within such limits.

**Source:** Laws 1879, § 69, XIX, p. 214; Laws 1881, c. 23, § 8, XIX, p. 182; Laws 1885, c. 20, § 1, XIX, p. 173; Laws 1887, c. 12, § 1, XIX, p. 301; R.S.1913, § 5124; C.S.1922, § 4299; C.S.1929, § 17-448; R.S.1943, § 17-550; Laws 2017, LB133, § 175.  
Effective date August 24, 2017.

**17-551 Railways; depots; regulation.**

Cities of the second class and villages shall have power to regulate levees, depots, depot grounds, and places for storing freight and goods and to provide for and regulate the passage of railways through streets and public grounds of the city or village.

**Source:** Laws 1879, § 69, XX, p. 215; Laws 1881, c. 23, § 8, XX, p. 182; Laws 1885, c. 20, § 1, XX, p. 173; Laws 1887, c. 12, § 1, XX, p. 302; R.S.1913, § 5125; C.S.1922, § 4300; C.S.1929, § 17-449; R.S.1943, § 17-551; Laws 2017, LB133, § 176.  
Effective date August 24, 2017.

**17-552 Railways; crossings; safety regulations.**

Cities of the second class and villages shall have power to regulate the crossing of railway tracks and the running of railway engines, cars, or trucks within the corporate limits of such city or village and to govern the speed of such engines, cars, or trucks, and to make any other and further provisions, rules, and restrictions to prevent accidents at crossings and on the tracks of railways.

**Source:** Laws 1879, § 69, XXI, p. 215; Laws 1881, c. 23, § 8, XXI, p. 183; Laws 1885, c. 20, § 1, XXI, p. 174; Laws 1887, c. 12, § 1, XXI, p. 302; R.S.1913, § 5126; C.S.1922, § 4301; C.S.1929, § 17-450; R.S.1943, § 17-552; Laws 2017, LB133, § 177.  
Effective date August 24, 2017.

**17-554 Fuel and feed; inspection and weighing.**

Cities of the second class and villages shall have power to (1) provide for the inspection and weighing of hay, grain, and coal, and the measuring of wood and fuel to be used in the city or village, (2) regulate and prescribe the place or places for sale of hay, coal, and wood, and (3) fix the fees and duties of persons authorized to perform inspections under this section.

**Source:** Laws 1879, § 69, XXIII, p. 215; Laws 1881, c. 23, § 8, XXIII, p. 183; Laws 1885, c. 20, § 1, XXIII, p. 174; Laws 1887, c. 12, § 1,

XXIII, p. 302; R.S.1913, § 5128; C.S.1922, § 4303; C.S.1929, § 17-452; R.S.1943, § 17-554; Laws 2017, LB133, § 178.  
Effective date August 24, 2017.

**17-555 Streets and sidewalks; removal of obstructions; trees; declaration of nuisance; procedure; special assessment.**

(1) Cities of the second class or villages may remove all obstructions from sidewalks, curbstones, gutters, and crosswalks at the expense of the person placing them there or at the expense of the city or village and require and regulate the planting and protection of shade trees in and along the streets and the trimming and removing of such trees.

(2) Cities of the second class or villages may by ordinance declare it to be a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees within the right-of-way of streets within the corporate limits or within the extraterritorial zoning jurisdiction of the city or village. Notice to abate and remove such nuisance and notice of the right to a hearing and the manner in which it may be requested shall be given to each owner or owner's duly authorized agent and to the occupant, if any. The city or village shall establish the method of notice by ordinance. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Within five days after receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the city or village to appeal the decision to abate or remove the nuisance by filing a written appeal with the office of the city clerk or village clerk. A hearing on the appeal shall be held within fourteen days after the filing of the appeal and shall be conducted by an elected or appointed officer as designated in the ordinance. The hearing officer shall render a decision on the appeal within five business days after the conclusion of the hearing. If the appeal fails, the city or village may have the work done to abate and remove the dead or diseased trees. If the owner or occupant of the lot or piece of ground does not request a hearing with the city or village within five days after receipt of such notice or fails to comply with the order to abate and remove the nuisance, the city or village may have such work done. The city or village may levy and assess all or any portion of the costs and expenses of the work upon the lot or piece of ground so benefited as a special assessment.

(3) Cities of the second class or villages may regulate the building of bulkheads, cellar and basement ways, stairways, railways, windows, doorways, awnings, lampposts, awning posts, all other structures projecting upon or over and adjoining, and all other excavations through and under the sidewalks in the city or village.

**Source:** Laws 1879, § 69, XXIV, p. 215; Laws 1881, c. 23, § 8, XXIV, p. 183; Laws 1885, c. 20, § 1, XXIV, p. 174; Laws 1887, c. 12, § 1, XXIV, p. 303; R.S.1913, § 5129; C.S.1922, § 4304; C.S.1929, § 17-453; R.S.1943, § 17-555; Laws 1994, LB 695, § 6; Laws 2015, LB266, § 11; Laws 2015, LB361, § 33; Laws 2016, LB703, § 2; Laws 2017, LB133, § 179.  
Effective date August 24, 2017.

**17-556 Public safety; firearms; explosives; riots; regulation.**

Cities of the second class and villages shall have the power to (1) prevent and restrain riots, routs, noises, disturbances, or disorderly assemblages, (2) regu-



late, prevent, restrain, or remove nuisances and to designate what shall be considered a nuisance, (3) regulate, punish, and prevent the discharge of firearms, rockets, powder, fireworks, or any other dangerous combustible material in the streets, lots, grounds, alleys, or about or in the vicinity of any buildings, (4) regulate, prevent, and punish the carrying of concealed weapons, except the carrying of a concealed handgun in compliance with the Concealed Handgun Permit Act, and (5) arrest, regulate, punish, or fine all vagrants.

**Source:** Laws 1879, § 69, XXV, p. 216; Laws 1881, c. 23, § 8, XXV, p. 184; Laws 1885, c. 20, § 1, XXV, p. 175; Laws 1887, c. 12, § 1, XXV, p. 303; R.S.1913, § 5130; C.S.1922, § 4305; C.S.1929, § 17-454; R.S.1943, § 17-556; Laws 2009, LB430, § 4; Laws 2017, LB133, § 180.

Effective date August 24, 2017.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

**17-557 Streets; safety regulations; removal of snow, ice, and other encroachments.**

Cities of the second class and villages shall have power to (1) prevent and remove all encroachments, including snow, ice, mud, or other obstructions, into and upon all sidewalks, streets, avenues, alleys, and other city or village property, (2) punish and prevent all horseracing, fast driving, or riding in the streets, highways, alleys, bridges, or places in the city or village, (3) regulate all games, practices, or amusements within the city or village likely to result in damage to any person or property, and (4) regulate and prevent the riding, driving, or passing of horses, mules, cattle, or other animals over, upon, or across sidewalks or along any street of the city or village.

**Source:** Laws 1879, § 69, XXVI, p. 216; Laws 1881, c. 23, § 8, XXVI, p. 184; Laws 1885, c. 20, § 1, XXVI, p. 175; Laws 1887, c. 12, § 1, XXVI, p. 303; R.S.1913, § 5131; C.S.1922, § 4306; C.S.1929, § 17-455; R.S.1943, § 17-557; Laws 1947, c. 37, § 1, p. 148; Laws 2017, LB133, § 181.

Effective date August 24, 2017.

**17-557.01 Sidewalks; removal of encroachments; cost of removal; special assessments; interest.**

If the abutting property owner refuses or neglects, after five days' notice by publication or, in place thereof, personal service of such notice, to remove all encroachments from sidewalks, as provided in section 17-557, the city of the second class or village through the proper officers may cause such encroachments to be removed and the cost of removal shall be paid out of the street fund. The city council or village board of trustees shall assess the cost of the notice and removal of the encroachment against such abutting property as a special assessment. Such special assessment shall be known as a special sidewalk assessment and, together with the cost of notice, shall be levied and collected as a special assessment in addition to the general revenue taxes and shall be subject to the same penalties as other special assessments and shall

draw interest from the date of the assessment. Upon payment of the assessment, the assessment shall be credited to the street fund.

**Source:** Laws 1947, c. 37, § 2, p. 149; Laws 1969, c. 51, § 48, p. 302; Laws 2015, LB361, § 34; Laws 2017, LB133, § 183.

Effective date August 24, 2017.

**17-558 Streets; improving; vacating; abutting property; how treated.**

(1) Cities of the second class and villages shall have power to open, widen, or otherwise improve or vacate any street, avenue, alley, or lane within the limits of the city or village and also to create, open, and improve any new street, avenue, alley, or lane. All damages sustained by the citizens of the city or village, or by the owners of the property therein, shall be ascertained in such manner as shall be provided by ordinance.

(2) Whenever any street, avenue, alley, or lane is vacated, such street, avenue, alley, or lane shall revert to the owners of the abutting real estate, one-half on each side thereof, and become a part of such property, unless the city or village reserves title in the ordinance vacating such street or alley. If title is retained by the city or village, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the city or village.

(3) When a portion of a street, avenue, alley, or lane is vacated only on one side of the center thereof, the title to such land shall vest in the owner of the abutting property and become a part of such property unless the city or village reserves title in the ordinance vacating a portion of such street, avenue, alley, or lane. If title is retained by the city or village, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the city or village.

(4) When the city or village vacates all or any portion of a street, avenue, alley, or lane, the city or village shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating ordinance or resolution with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots.

(5) The title to property vacated pursuant to this section shall be subject to the following:

(a) There is reserved to the city or village the right to maintain, operate, repair, and renew public utilities existing at the time title to the property is vacated there; and

(b) There is reserved to the city or village, any public utilities, and any cable television systems the right to maintain, repair, renew, and operate water mains, gas mains, pole lines, conduits, electrical transmission lines, sound and signal transmission lines, and other similar services and equipment and appurtenances, including lateral connections or branch lines, above, on, or below the surface of the ground that are existing as valid easements at the time title to the property is vacated for the purposes of serving the general public or the abutting properties and to enter upon the premises to accomplish such purposes at any and all reasonable times.

**Source:** Laws 1879, § 69, XXVII, p. 216; Laws 1881, c. 23, § 8, XXVII, p. 184; Laws 1885, c. 20, § 1, XXVII, p. 175; Laws 1887, c. 12, § 1, XXVII, p. 304; R.S.1913, § 5132; C.S.1922, § 4307; C.S.1929,

§ 17-456; R.S.1943, § 17-558; Laws 1969, c. 58, § 3, p. 364; Laws 2001, LB 483, § 6; Laws 2005, LB 161, § 7; Laws 2017, LB133, § 182.

Effective date August 24, 2017.

**17-559 Streets; offstreet parking; markets; public utilities; establishment; eminent domain; procedure.**

Cities of the second class and villages shall have power to (1) create, open, widen, or extend any street, avenue, alley, offstreet parking area, or other public way, or annul, vacate, or discontinue such street, avenue, alley, area, or public way, (2) take private property for public use for the purpose of erecting or establishing market houses, market places, parks, swimming pools, airports, gas systems, including distribution facilities, water systems, power plants, including electrical distribution facilities, sewer systems, or for any other needed public purpose, and (3) exercise the power of eminent domain within or without the city or village limits for the purpose of establishing and operating power plants including electrical distribution facilities to supply such city or village with public utility service, and for sewerage purposes, water supply systems, or airports. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724, except as to property specifically excluded by section 76-703 and as to which sections 19-701 to 19-707 or the Municipal Natural Gas System Condemnation Act is applicable. For purposes of this section, electrical distribution facilities shall be located within the retail service area of such city or village as approved by and on file with the Nebraska Power Review Board, pursuant to Chapter 70, article 10.

**Source:** Laws 1879, § 69, XXVIII, p. 217; Laws 1881, c. 23, § 8, XXVIII, p. 185; Laws 1885, c. 20, § 1, XXVIII, p. 176; Laws 1887, c. 12, § 1, XXVIII, p. 304; Laws 1909, c. 23, § 1, p. 195; R.S.1913, § 5133; Laws 1919, c. 47, § 1, p. 136; C.S.1922, § 4308; Laws 1923, c. 137, § 1, p. 336; C.S.1929, § 17-457; R.S.1943, § 17-559; Laws 1951, c. 101, § 58, p. 473; Laws 1959, c. 50, § 1, p. 240; Laws 1982, LB 875, § 2; Laws 2002, LB 384, § 25; Laws 2017, LB133, § 184.

Effective date August 24, 2017.

**Cross References**

**Municipal Natural Gas System Condemnation Act**, see section 19-4624.

**17-560 Borrowing power; pledges.**

Cities of the second class and villages shall have power to borrow money on the credit of the city, and pledge the credit, revenue, and public property of the city for the payment of debts, when authorized in the manner provided by law.

**Source:** Laws 1879, § 69, XXIX, p. 217; Laws 1881, c. 23, XXIX, p. 185; Laws 1885, c. 20, § 1, XXIX, p. 176; Laws 1887, c. 12, § 1, XXIX, p. 305; R.S.1913, § 5134; C.S.1922, § 4309; C.S.1929, § 17-458; R.S.1943, § 17-560; Laws 2017, LB133, § 185.

Effective date August 24, 2017.

**17-561 Railway tracks; lighting, city may require; cost; assessment.**

Cities of the second class and villages shall have the power to require the lighting of the railroad track of any railway within the city or village in such

manner as prescribed by ordinance. If any company owning or operating such railway fails to comply with such requirements, the city council or village board of trustees may cause such lighting to be done and may assess the expense of such lighting against such company. Such assessment shall constitute a lien upon any real estate belonging to such company and lying within such city or village and may be collected in the same manner as taxes for general purposes.

**Source:** Laws 1911, c. 19, § 1, p. 136; R.S.1913, § 5135; C.S.1922, § 4310; C.S.1929, § 17-501; R.S.1943, § 17-561; Laws 2017, LB133, § 186.

Effective date August 24, 2017.

**17-563 Lots; drainage; weeds or litter; nuisance; noncompliance by owner; notice; hearing; special assessment; violation; penalty; civil action.**

(1) A city of the second class or village by ordinance (a) may require lots or pieces of ground within the city or village or within its extraterritorial zoning jurisdiction to be drained or filled so as to prevent stagnant water or any other nuisance accumulating on such lot or piece of ground, (b) may require the owner or occupant of any lot or piece of ground within the city or village or within its extraterritorial zoning jurisdiction to keep the lot or piece of ground and the adjoining streets and alleys free of excessive growth of weeds, grasses, or worthless vegetation, and (c) may prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or village or within its extraterritorial zoning jurisdiction.

(2) Any city of the second class or village may by ordinance declare it to be a nuisance to permit or maintain excessive growth of weeds, grasses, or worthless vegetation or to litter or cause litter to be deposited or remain thereon except in proper receptacles. The city or village shall establish by ordinance the height at which weeds, grasses, or worthless vegetation are a nuisance.

(3) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating any ordinance authorized under this section, be guilty of a Class V misdemeanor.

(4) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any. The city or village shall establish the method of notice by ordinance. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Within five days after receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the city or village to appeal the decision to abate or remove a nuisance by filing a written appeal with the office of the city clerk or village clerk. A hearing on the appeal shall be held within fourteen days after the filing of the appeal and shall be conducted by an elected or appointed officer as designated in the ordinance. The hearing officer shall render a decision on the appeal within five business days after the conclusion of the hearing. If the appeal fails, the city or village may have such work done. Within five days after receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or village or fails to comply with the order to abate and remove the nuisance, the city or village may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city or village may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited as a special assessment in the same manner as

other special assessments for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

(5) For purposes of this section:

(a) Litter includes, but is not limited to: (i) Trash, rubbish, refuse, garbage, paper, rags, and ashes; (ii) wood, plaster, cement, brick, or stone building rubble; (iii) grass, leaves, and worthless vegetation; (iv) dead animals; and (v) any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk; and

(b) Weeds includes, but is not limited to, bindweed (*Convolvulus arvensis*), puncture vine (*Tribulus terrestris*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), perennial peppergrass (*Lepidium draba*), Russian knapweed (*Centaurea picris*), Johnson grass (*Sorghum halepense*), nodding or musk thistle, quack grass (*Agropyron repens*), perennial sow thistle (*Sonchus arvensis*), horse nettle (*Solanum carolinense*), bull thistle (*Cirsium lanceolatum*), buckthorn (*Rhamnus* sp.) (toun), hemp plant (*Cannabis sativa*), and ragweed (*Ambrosiaceae*).

**Source:** Laws 1879, § 71, p. 219; R.S.1913, § 5137; C.S.1922, § 4312; C.S.1929, § 17-503; R.S.1943, § 17-563; Laws 1991, LB 330, § 2; Laws 1995, LB 42, § 3; Laws 2004, LB 997, § 2; Laws 2009, LB495, § 8; Laws 2013, LB643, § 2; Laws 2015, LB266, § 12; Laws 2015, LB361, § 35; Laws 2017, LB133, § 187.  
Effective date August 24, 2017.

#### **17-564 Fines; actions to recover.**

Fines for violation of an ordinance of a city of the second class or village may, in addition to any other mode provided, be recovered by suit or action before a court of competent jurisdiction, in the name of the state. In any such suit or action, where pleading is necessary, it shall be sufficient to declare generally for the amount claimed to be due in respect to the violation of the ordinance, referring to its title and the date of its adoption or passage, and showing as nearly as may be the facts of the alleged violation.

**Source:** Laws 1879, § 72, p. 220; R.S.1913, § 5138; C.S.1922, § 4313; C.S.1929, § 17-504; R.S.1943, § 17-564; Laws 1972, LB 1032, § 108; Laws 2017, LB133, § 188.  
Effective date August 24, 2017.

#### **17-565 Fines; action to recover; limitation.**

All suits for the recovery of any fine, and prosecutions for the commission of any offense made punishable by ordinance of a city of the second class or village, shall be barred in one year after the commission of the offense for which the fine is sought to be recovered, or the prosecution is commenced.

**Source:** Laws 1879, § 74, p. 220; R.S.1913, § 5139; C.S.1922, § 4314; C.S.1929, § 17-505; R.S.1943, § 17-565; Laws 2017, LB133, § 189.  
Effective date August 24, 2017.

**17-566 County jail; use by city; compensation.**

Any city of the second class or village shall have the right to use the county jail in the county in which the city or village is located for the confinement of such persons as may be imprisoned under the ordinances of such city or village. The city or village shall be liable to the county for the cost of keeping such prisoners as provided by section 47-120.

**Source:** Laws 1879, § 73, p. 220; R.S.1913, § 5140; C.S.1922, § 4315; C.S.1929, § 17-506; Laws 1937, c. 85, § 2, p. 283; C.S.Supp.,1941, § 17-506; R.S.1943, § 17-566; Laws 1961, c. 47, § 2, p. 184; Laws 1989, LB 4, § 2; Laws 2017, LB133, § 190.  
Effective date August 24, 2017.

**17-567 Highways, streets, bridges; maintenance and control.**

(1) The city council of a city of the second class or village board of trustees shall have the care, supervision, and control of all public highways, bridges, streets, alleys, public squares, and commons within such city or village and shall cause such highways, bridges, streets, alleys, public squares, and commons to be kept open and in repair and free from nuisances.

(2) All public bridges exceeding sixty feet in length, over any stream crossing a state or county highway, shall be constructed and kept in repair by the county. When any city of the second class or village has constructed a bridge over sixty feet span, on any county or state highway within the corporate limits of such city or village, and has incurred a debt for such bridge, the county treasurer of the county in which such bridge is located shall pay to the city treasurer or village treasurer seventy-five percent of all bridge taxes collected in the city or village until such debt, and interest thereon, is fully paid.

(3) The city council or village board of trustees may appropriate a sum not exceeding five dollars per linear foot to aid in the construction of any county bridge within the limits of such city or village, or may appropriate a like sum to aid in the construction of any bridge contiguous to the city or village, on a highway leading to the same, or any bridge across any unnavigable river which divides the county, in which the city or village is located, from another state.

(4) No street or alley shall be dedicated to public use, by the proprietor of ground in any city of the second class or village, shall be deemed a public street or alley, or shall be under the use or control of the city council or village board of trustees, unless the dedication shall be accepted and confirmed by an ordinance especially passed for such purpose.

**Source:** Laws 1879, § 77, p. 221; R.S.1913, § 5141; C.S.1922, § 4316; C.S.1929, § 17-507; R.S.1943, § 17-567; Laws 1957, c. 30, § 2, p. 190; Laws 1959, c. 49, § 2, p. 238; Laws 1982, LB 909, § 6; Laws 2017, LB133, § 191.  
Effective date August 24, 2017.

**17-568 Employment of special engineer.**

The mayor and city council of a city of the second class or village board of trustees may employ a special engineer to make, or assist in making, any estimate necessary or to perform any other duty provided for in section 17-568.01. Any work executed by such special engineer shall have the same

validity and serve in all respects as though executed by the city engineer or village engineer.

**Source:** Laws 1879, § 20, p. 197; R.S.1913, § 5011; Laws 1921, c. 183, § 1, p. 695; C.S.1922, § 4180; Laws 1925, c. 51, § 1, p. 202; C.S.1929, § 17-119; Laws 1943, c. 25, § 1, p. 118; R.S.1943, § 17-568; Laws 1949, c. 25, § 1(1), p. 98; Laws 1951, c. 33, § 1, p. 133; Laws 1983, LB 304, § 3; Laws 2017, LB133, § 192. Effective date August 24, 2017.

**17-568.01 City engineer or village engineer; public works; prepare estimate of cost; board of public works; powers; contracts; procedure; city council or village board of trustees; powers and duties; public emergency.**

(1) The city engineer in a city of the second class or village engineer shall, when requested by the mayor, city council, or village board of trustees, make estimates of the cost of labor and material which may be done or furnished by contract with the city or village and make all surveys, estimates, and calculations necessary to be made for the establishment of grades, the building of culverts, sewers, electric light systems, waterworks, power plants, public heating systems, bridges, curbing, and gutters, the improvement of streets, and the erection and repair of buildings and shall perform such other duties as the city council or village board of trustees may require.

When a city of the second class has appointed a board of public works, and the mayor and city council have by ordinance so authorized, the board of public works may utilize its own engineering staff and may hire consulting engineers for the design and installation of extensions and improvements of the works under the jurisdiction of the board of public works. Whenever the mayor and city council have authorized the same, the board of public works may purchase material and employ labor for the enlargement or improvement of the systems and works under the jurisdiction of the board of public works.

(2) Except as provided in section 18-412.01, no contract for enlargement or general improvements, such as water extensions, sewers, public heating systems, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, costing over thirty thousand dollars shall be made unless it is first approved by the city council or village board of trustees.

(3) Except as provided in section 18-412.01, before the city council or village board of trustees makes any contract in excess of thirty thousand dollars for enlargement or general improvements, such as water extensions, sewers, public heating systems, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, an estimate of the cost shall be made by the city engineer or village engineer and submitted to the city council or village board of trustees. In advertising for bids as provided in subsections (4) and (6) of this section, the city council or village board of trustees may publish the amount of the estimate.

(4) Advertisements for bids shall be required for any contract costing over thirty thousand dollars entered into (a) for enlargement or general improvements, such as water extensions, sewers, public heating systems, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, or (b) for the purchase of

equipment used in the construction of such enlargement or general improvements.

(5) A municipal electric utility may enter into a contract for the enlargement or improvement of the electric system or for the purchase of equipment used for such enlargement or improvement without advertising for bids if the price is: (a) Thirty thousand dollars or less; (b) sixty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of one million dollars; (c) ninety thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of five million dollars; or (d) one hundred twenty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of ten million dollars.

(6) The advertisement provided for in subsections (3) and (4) of this section shall be published at least seven days prior to the bid closing in a legal newspaper in or of general circulation in the city or village. In case of a public emergency resulting from infectious or contagious diseases, destructive windstorms, floods, snow, war, or an exigency or pressing necessity or unforeseen need calling for immediate action or remedy to prevent a serious loss of, or serious injury or damage to, life, health, or property, estimates of costs and advertising for bids may be waived in the emergency ordinance authorized by section 17-613 when adopted by a three-fourths vote of the city council or village board of trustees and entered of record.

(7) If, after advertising for bids as provided in subsections (3), (4), and (6) of this section, the city council or village board of trustees receives fewer than two bids on a contract or if the bids received by the city council or village board of trustees contain a price which exceeds the estimated cost, the mayor and the city council or village board of trustees may negotiate a contract in an attempt to complete the proposed enlargement or general improvements at a cost commensurate with the estimate given.

(8) If the materials are of such a nature that, in the opinion of the manufacturer and with the concurrence of the city council, village board of trustees, or board of public works, no cost can be estimated until the materials have been manufactured or assembled to the specific qualifications of the purchasing municipality, the city council, village board of trustees, or board of public works may authorize the manufacture and assemblage of such materials and may thereafter approve the estimated cost expenditure when it is provided by the manufacturer.

**Source:** Laws 1879, § 20, p. 197; R.S.1913, § 5011; Laws 1921, c. 183, § 1, p. 695; C.S.1922, § 4180; Laws 1925, c. 51, § 1, p. 202; C.S.1929, § 17-119; Laws 1943, c. 25, § 1, p. 118; R.S.1943, § 17-568; Laws 1949, c. 25, § 1(2), p. 98; Laws 1951, c. 34, § 1, p. 134; Laws 1957, c. 32, § 1, p. 195; Laws 1959, c. 61, § 2, p. 277; Laws 1969, c. 78, § 2, p. 409; Laws 1975, LB 171, § 2; Laws 1979, LB 356, § 2; Laws 1983, LB 304, § 4; Laws 1984, LB 540, § 8; Laws 1997, LB 238, § 3; Laws 2008, LB947, § 2; Laws 2017, LB133, § 193.

Effective date August 24, 2017.

#### **17-568.02 Municipal bidding procedure; waiver; when.**



Any municipal bidding procedure may be waived by the city council, village board of trustees, or board of public works (1) when materials or equipment are purchased at the same price and from the same seller as materials or equipment which have formerly been obtained pursuant to the state bidding procedure in sections 81-145 to 81-162, (2) when the contract is negotiated directly with a sheltered workshop pursuant to section 48-1503, or (3) when required to comply with any federal grant, loan, or program.

**Source:** Laws 1997, LB 238, § 4; Laws 2011, LB335, § 4; Laws 2017, LB133, § 194.  
Effective date August 24, 2017.

**17-569 Abandoned real estate; sale; ordinance.**

Before any sale of abandoned real estate is made by a city of the second class or village, the city council or village board of trustees shall by ordinance set forth the date of the purchase, gift, or condemnation, a description of the property, the purpose for which such real estate was acquired, the abandonment of the same, and that a sale is deemed expedient; shall fix the time, place, terms, and manner of sale; and shall reserve the right to reject any and all bids.

**Source:** Laws 1911, c. 17, § 2, p. 134; R.S.1913, § 5178; C.S.1922, § 4365; C.S.1929, § 17-563; R.S.1943, § 17-569; Laws 2017, LB133, § 195.  
Effective date August 24, 2017.

**17-570 Abandoned real estate; sale; notice.**

No sale under section 17-569 shall be had until at least thirty days' notice shall have been given by publication in a legal newspaper in or of general circulation in the city or village.

**Source:** Laws 1911, c. 17, § 3, p. 134; R.S.1913, § 5179; C.S.1922, § 4366; C.S.1929, § 17-564; R.S.1943, § 17-570; Laws 2017, LB133, § 196.  
Effective date August 24, 2017.

**17-571 Abandoned real estate; sale; sealed bids; deed.**

Any sale under section 17-569 shall be by sealed bids; and upon approval of the sale by a two-thirds vote of the city council or village board of trustees, the mayor or chairperson of the village board of trustees shall, in the name of the city or village, execute and deliver a deed to the purchaser, which deed shall be attested by the city clerk or village clerk bearing the seal of the city or village.

**Source:** Laws 1911, c. 17, § 4, p. 134; R.S.1913, § 5180; C.S.1922, § 4367; C.S.1929, § 17-565; R.S.1943, § 17-571; Laws 2017, LB133, § 197.  
Effective date August 24, 2017.

**17-572 Loans to students; conditions.**

Cities of the second class and villages may contract with a person including such person's parent or guardian if such person is a minor to loan money to such person while such person pursues a course of study at an accredited college or university leading to a degree of Doctor of Medicine or Doctor of Dental Surgery in consideration for such person's promise to practice medicine

or dentistry in such city or village and repay such city or village for such money loaned during such person's study after such person shall have become established in his or her practice, and upon such other terms and conditions as the city council or village board of trustees may determine are warranted in the premises. If such person shall discontinue his or her course of study before attaining such degree or fail to practice in such city or village after attaining such degree and a license to practice medicine or dentistry, such city or village may pursue any remedy it may have against such person or his or her parent or guardian as in any other commercial transaction.

**Source:** Laws 1971, LB 497, § 1; Laws 2017, LB133, § 198.  
Effective date August 24, 2017.

**17-573 Litter; removal; notice; action by city or village.**

Each city of the second class and village may, by ordinance, prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or village or within its extraterritorial zoning jurisdiction and require the removal of such litter so as to abate any nuisance. If the owner fails to remove such litter, after five days' notice by publication and by certified mail, the city or village shall remove the litter or cause it to be removed and shall assess the cost of removal against the property so benefited as provided by ordinance.

**Source:** Laws 1975, LB 117, § 2; Laws 2015, LB266, § 9; R.S.Supp.,2016, § 17-123.01; Laws 2017, LB133, § 309.  
Effective date August 24, 2017.

**17-574 Sewerage and drainage; districts; regulation.**

The mayor and city council of any city of the second class, or the board of trustees of any village, are hereby authorized to lay off such city or village and the territory within the extraterritorial zoning jurisdiction of such city or village into suitable districts for the purpose of establishing a system of sewerage and drainage. Such city or village may (1) provide such system; (2) regulate the construction, repairs, and use of sewers and drains and of all proper house connections and branches; (3) compel all proper connections therewith and branches from other streets, avenues, and alleys, and from private property; and (4) provide penalties for any obstruction of or injury to any sewer or part of such sewer or failure to make connections with such system.

**Source:** Laws 1903, c. 22, § 1, p. 254; R.S.1913, § 5043; C.S.1922, § 4212; C.S.1929, § 17-151; R.S.1943, § 17-149; Laws 1949, c. 22, § 1(1), p. 94; Laws 1979, LB 136, § 2; R.S.1943, (2012), § 17-149; Laws 2017, LB133, § 310.  
Effective date August 24, 2017.

**17-575 Sewerage and drainage; failure of property owner to connect; notice; cost; special assessment; collection.**

If any property owner neglects or fails within a period of ten days after notice has been given to him or her by certified or registered mail or by publication in a legal newspaper published in or of general circulation in a city of the second class or village to make connection with the sewerage system as provided in section 17-574, the governing body of such city or village may cause the connection to be done, assess the cost of such connection against the property

as a special assessment, and collect the special assessment in the manner provided for collection of other special assessments.

**Source:** Laws 1949, c. 22, § 1(2), p. 94; Laws 1987, LB 93, § 4; Laws 2015, LB361, § 28; R.S.Supp.,2016, § 17-149.01; Laws 2017, LB133, § 311.  
Effective date August 24, 2017.

## ARTICLE 6

### ELECTIONS, OFFICERS, ORDINANCES

#### (a) ELECTIONS

##### Section

- 17-601.01. Caucus; when held; notice.
- 17-601.02. Caucus; notice to village clerk; contents.
- 17-602. Registered voters; qualifications.
- 17-603. Officers; canvass; certificates of election; failure to qualify, effect.

#### (b) OFFICERS

- 17-604. Officers; powers, duties, and compensation; regulate by ordinance; bond or insurance; premium.
- 17-605. City clerk or village clerk; duties.
- 17-606. Treasurer; duties; failure to file account; penalty.
- 17-607. Treasurer; depositories; qualification; bond; exemption of treasurer from liability; conflict of interest.
- 17-608. Treasurer; surplus funds; investments authorized; interest.
- 17-609. Treasurer; utility funds; retirement of bonds or warrants.
- 17-610. City attorney or village attorney; duties.
- 17-611. Officer; extra compensation prohibited.
- 17-612. Elective officers, salary; increase during term of office prohibited; exception.

#### (c) ORDINANCES

- 17-613. Ordinances; style; publication; proof.
- 17-614. Ordinances; how enacted; title.
- 17-615. Ordinances; passage; rules and regulations; proof.
- 17-616. Ordinances; contracts; appointments; vote; record.

#### (a) ELECTIONS

##### **17-601.01 Caucus; when held; notice.**

In any village the board of trustees may, by ordinance, call a caucus for the purpose of nomination of candidates for offices to be filled in the village election. Such caucus shall be held at least ten days before the filing deadline for such election, and the village board of trustees shall publish notice of such caucus in at least one legal newspaper in or of general circulation in the village at least once each week for two consecutive weeks before such caucus.

**Source:** Laws 1971, LB 432, § 1; Laws 1972, LB 1047, § 2; Laws 1993, LB 348, § 2; Laws 2017, LB133, § 199.  
Effective date August 24, 2017.

##### **17-601.02 Caucus; notice to village clerk; contents.**

The chairperson of the caucus at which candidates are nominated under section 17-601.01 shall notify the village clerk in writing of the candidates so nominated, not later than two days following the caucus. The village clerk shall then notify the persons so nominated of their nomination, such notification to

take place not later than five days after such caucus. No candidate so nominated shall have his or her name placed upon the ballot unless, not more than ten days after the holding of such caucus, he or she files with the village clerk a written statement accepting the nomination of the caucus and pays the filing fee, if any, for the office for which he or she was nominated.

**Source:** Laws 1971, LB 432, § 2; Laws 1993, LB 348, § 3; Laws 2017, LB133, § 200.  
Effective date August 24, 2017.

**17-602 Registered voters; qualifications.**

All registered voters residing within the corporate limits of any city of the second class or village on or before election day shall be entitled to vote at all city and village elections.

**Source:** Laws 1879, § 61, p. 208; R.S.1913, § 5144; C.S.1922, § 4319; C.S.1929, § 17-510; R.S.1943, § 17-602; Laws 1963, c. 74, § 1, p. 277; Laws 1973, LB 559, § 8; Laws 1994, LB 76, § 497; Laws 2017, LB133, § 201.  
Effective date August 24, 2017.

**17-603 Officers; canvass; certificates of election; failure to qualify, effect.**

At a meeting of the city council of a city of the second class, or the village board of trustees, on the first Monday after any city or village election, the returns, including returns for the election of members of the school board, shall be canvassed, and the city council or village board of trustees shall cause the city clerk or village clerk to make out and deliver certificates of election, under the seal of the city or village, to the persons found to be elected. A neglect of any such elected officer to qualify within ten days after the delivery of such certificate shall be deemed a refusal to accept the office to which he or she may have been elected.

**Source:** Laws 1879, § 62, p. 208; R.S.1913, § 5145; C.S.1922, § 4320; C.S.1929, § 17-511; R.S.1943, § 17-603; Laws 1951, c. 35, § 1, p. 136; Laws 1959, c. 60, § 56, p. 273; Laws 1994, LB 76, § 498; Laws 2017, LB133, § 202.  
Effective date August 24, 2017.

(b) OFFICERS

**17-604 Officers; powers, duties, and compensation; regulate by ordinance; bond or insurance; premium.**

A city of the second class or village may enact ordinances or bylaws to regulate and prescribe the powers, duties, and compensation of officers and to require from all officers, 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; Laws 2017, LB133, § 203.  
Effective date August 24, 2017.

**17-605 City clerk or village clerk; duties.**

The city clerk or village clerk shall have the custody of all laws and ordinances and shall keep a correct journal of the proceedings of the city council of a city of the second class or village board of trustees. After the period of time specified by the State Records Administrator pursuant to the Records Management Act, the city clerk or village clerk may transfer such journal of the proceedings of the city council or village board of trustees to the State Archives of the Nebraska State Historical Society for permanent preservation. He or she shall also perform such other duties as may be required by the ordinances of the city or village.

**Source:** Laws 1879, § 63, p. 208; R.S.1913, § 5147; C.S.1922, § 4322; C.S.1929, § 17-513; R.S.1943, § 17-605; Laws 1973, LB 224, § 5; Laws 2013, LB112, § 3; Laws 2017, LB133, § 204.  
Effective date August 24, 2017.

**Cross References**

Records Management Act, see section 84-1220.

**17-606 Treasurer; duties; failure to file account; penalty.**

(1) The treasurer of each city of the second class or village shall be the custodian of all money belonging to the city or village. He or she 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 for such money, specifying the date of payment and on what account paid. He or she shall also file copies of such receipts with his or her monthly reports, and he or she shall, at the end of every month, and as often as may be required, render an account to the city council or village board of trustees, under oath, showing the state of the treasury at the date of such account 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, with any and all vouchers held by him or her, shall be filed with his or her account in the clerk's office. If the city treasurer or village treasurer fails to render his or her account within twenty days after the end of the month, or by a later date established by the city council or village board of trustees, the mayor of a city of the second class or the chairperson of the village board of trustees with the advice and consent of the trustees may use this failure as cause to remove the city treasurer or village treasurer from office.

(2) The city treasurer or village treasurer shall keep a record of all outstanding bonds against the city or village, showing the number and amount of each bond, for and to whom the bonds were issued, and the date upon which any bond is purchased, paid, or canceled. He or she shall accompany the annual statement submitted pursuant to section 19-1101 with a description of the bonds issued and sold in that year and the terms of sale, with every item of expense thereof.

**Source:** Laws 1879, § 64, p. 209; R.S.1913, § 5148; C.S.1922, § 4323; C.S.1929, § 17-514; R.S.1943, § 17-606; Laws 2005, LB 528, § 2; Laws 2013, LB112, § 4; Laws 2017, LB133, § 205.  
Effective date August 24, 2017.

**17-607 Treasurer; depositories; qualification; bond; exemption of treasurer from liability; conflict of interest.**

(1) The treasurer of a city of the second class or village shall deposit, and at all times keep on deposit, for safekeeping, in banks, capital stock financial institutions, or qualifying mutual financial institutions of approved and responsible standing, all money collected, received, or held by him or her as city treasurer or village treasurer. Such deposits shall be subject to all regulations imposed by law or adopted by the city council or village board of trustees for the receiving and holding thereof. The fact that a stockholder, director, or other officer of such bank, capital stock financial institution, or qualifying mutual financial institution is also serving as mayor, as a member of the city council, as a member of the village board of trustees, as a member of a board of public works, or as any other officer of such municipality shall not disqualify such bank, capital stock financial institution, or qualifying mutual financial institution from acting as a depository for such municipal funds. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

(2) The city council or village board of trustees shall require from all banks, capital stock financial institutions, or qualifying mutual financial institutions (a) a bond in such penal sum as may be the maximum amount on deposit at any time less the amount insured or guaranteed by the Federal Deposit Insurance Corporation or, in lieu thereof, (b) security given as provided in the Public Funds Deposit Security Act, to secure the payment of all such deposits and accretions. The city council or village board of trustees shall approve such bond or giving of security. The city treasurer or village treasurer shall not be liable for any loss of any money sustained by reason of the failure of any such depository so designated and approved.

**Source:** Laws 1879, § 65, p. 209; R.S.1913, § 5149; Laws 1921, c. 304, § 1, p. 961; C.S.1922, § 4324; Laws 1927, c. 38, § 1, p. 168; Laws 1929, c. 45, § 1, p. 193; C.S.1929, § 17-515; Laws 1931, c. 33, § 1, p. 124; Laws 1935, c. 140, § 2, p. 515; Laws 1937, c. 31, § 1, p. 155; C.S.Supp.,1941, § 17-515; Laws 1943, c. 27, § 2(1), p. 121; R.S.1943, § 17-607; Laws 1957, c. 54, § 3, p. 264; Laws 1989, LB 33, § 22; Laws 1992, LB 757, § 19; Laws 1996, LB 1274, § 22; Laws 2001, LB 362, § 24; Laws 2003, LB 175, § 1; Laws 2009, LB259, § 10; Laws 2017, LB133, § 206.  
Effective date August 24, 2017.

**Cross References**

**Public Funds Deposit Security Act**, see section 77-2386.

**17-608 Treasurer; surplus funds; investments authorized; interest.**

When the treasurer of any city of the second class or village holds funds of any such city or village in excess of the amount required for maintenance or set aside for betterments and improvements, the mayor and city council or the village board of trustees may, by resolution, direct and authorize the treasurer to invest such surplus funds in the outstanding bonds or registered warrants of such city or village, in bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration, or in interest-bearing bonds or the obligations of the United

States. The interest on such bonds or warrants shall be credited to the fund out of which such bonds or warrants were purchased.

**Source:** Laws 1927, c. 38, § 1, p. 169; Laws 1929, c. 45, § 1, p. 193; C.S.1929, § 17-515; Laws 1931, c. 33, § 1, p. 125; Laws 1935, c. 140, § 2, p. 516; Laws 1937, c. 31, § 1, p. 155; C.S.Supp.,1941, § 17-515; Laws 1943, c. 27, § 2(2), p. 122; R.S.1943, § 17-608; Laws 1959, c. 263, § 6, p. 927; Laws 2017, LB133, § 207.  
Effective date August 24, 2017.

**17-609 Treasurer; utility funds; retirement of bonds or warrants.**

The mayor and city council of a city of the second class or village board of trustees may, by resolution, direct and authorize the city treasurer or village treasurer to dispose of the surplus electric light, water, or gas funds, or the funds arising from the sale of electric light, water, or natural gas distribution properties, by the payment of outstanding electric light, water, or gas distribution bonds or water warrants then due. The excess, if any, after such payments may be transferred to the general fund of such city or village.

**Source:** Laws 1929, c. 45, § 1, p. 194; C.S.1929, § 17-515; Laws 1931, c. 33, § 1, p. 125; Laws 1935, c. 140, § 2, p. 516; Laws 1937, c. 31, § 1, p. 156; C.S.Supp.,1941, § 17-515; Laws 1943, c. 27, § 2(3), p. 122; R.S.1943, § 17-609; Laws 1967, c. 77, § 1, p. 247; Laws 2017, LB133, § 208.  
Effective date August 24, 2017.

**17-610 City attorney or village attorney; duties.**

The city attorney or village attorney shall be the legal advisor of the city council in a city of the second class or village board of trustees. He or she shall commence, prosecute, and defend all suits and actions necessary to be commenced, prosecuted, or defended on behalf of the city or village, or that may be ordered by the city council or village board of trustees. When requested, he or she shall attend meetings of the city council or village board of trustees and give them his or her opinion upon any matters submitted to him or her, either orally or in writing, as may be required. He or she shall draft or review for legal correctness ordinances, contracts, franchises, and other instruments as may be required, and he or she shall perform such other duties as may be imposed upon him or her by general law or ordinance. The city council or village board of trustees of the city or village shall have the right to pay the city or village attorney compensation for legal services performed by him or her for such city or village on such terms as the city council or village board of trustees and attorney may agree, and to employ additional legal assistance and to pay for such legal assistance out of the funds of the city or village.

**Source:** Laws 1879, § 67, p. 210; R.S.1913, § 5150; C.S.1922, § 4325; C.S.1929, § 17-516; R.S.1943, § 17-610; Laws 1969, c. 94, § 1, p. 461; Laws 2017, LB133, § 209.  
Effective date August 24, 2017.

**17-611 Officer; extra compensation prohibited.**

No officer shall receive any pay or perquisites from a city of the second class or village other than his or her salary. Neither the city council nor village board of trustees shall pay or appropriate any money or other valuable thing to any

person not an officer for the performance of any act, service, or duty, the doing or performance of which shall come within the proper scope of the duties of any officer of such municipality.

**Source:** Laws 1879, § 68, p. 210; R.S.1913, § 5151; C.S.1922, § 4326; C.S.1929, § 17-517; R.S.1943, § 17-611; Laws 1957, c. 38, § 3, p. 208; Laws 1959, c. 62, § 2, p. 280; Laws 1961, c. 283, § 3, p. 831; Laws 1971, LB 494, § 4; Laws 1971, LB 549, § 1; Laws 1983, LB 370, § 8; Laws 2017, LB133, § 210.  
Effective date August 24, 2017.

**17-612 Elective officers, salary; increase during term of office prohibited; exception.**

The salary of any elective officer in a city of the second class or village shall not be increased or diminished during the term for which he or she has been elected except when there has been a combination and merger of offices as provided by sections 17-108.02 and 17-209.02, and except that when there are officers elected to the city council or a board or commission having more than one member and the terms of one or more members commence and end at different times, the compensation of all members of such city council, board, or commission may be increased or diminished at the beginning of the full term of any member thereof. No person who resigned or vacated any office shall be eligible for the same office during the time for which he or she was elected if during the same time the salary was increased.

**Source:** Laws 1879, § 75, p. 220; R.S.1913, § 5152; C.S.1922, § 4327; C.S.1929, § 17-518; R.S.1943, § 17-612; Laws 1945, c. 25, § 3, p. 136; Laws 1969, c. 89, § 3, p. 452; Laws 1972, LB 942, § 1; Laws 2017, LB133, § 211.  
Effective date August 24, 2017.

(c) ORDINANCES

**17-613 Ordinances; style; publication; proof.**

The style of all ordinances of a city of the second class or village shall be: Be it ordained by the mayor and city council of the city of . . . . ., or the chairperson and board of trustees of the village of . . . . . All ordinances of a general nature shall, before they take effect, be published, within fifteen days after they are passed, (1) in a legal newspaper in or of general circulation in such city or village or (2) by publishing the same in book or pamphlet form. In case of riot, infectious or contagious diseases, or other impending danger, failure of public utility, or any other emergency requiring its immediate operation, such ordinance shall take effect upon the proclamation of the mayor or chairperson of the village board of trustees, posted in at least three of the most public places in the city or village. Such emergency ordinance shall recite the emergency, be passed by a three-fourths vote of the city council or village board of trustees, and be entered of record on the minutes of the city or village. The passage, approval, and publication of all ordinances shall be sufficiently proved by a certificate under seal of the city or village from the city clerk or village clerk, showing that such ordinance was passed and approved and when and in what legal newspaper the ordinance was published. When ordinances are printed in book or pamphlet form, purporting to be published by authority



of the village board of trustees or city council, the ordinance need not be otherwise published, and such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances as of the dates mentioned in such book or pamphlet, in all courts without further proof.

**Source:** Laws 1879, § 59, p. 207; Laws 1881, c. 23, § 7, p. 171; R.S.1913, § 5153; C.S.1922, § 4328; C.S.1929, § 17-519; R.S.1943, § 17-613; Laws 1951, c. 36, § 1, p. 137; Laws 1969, c. 95, § 1, p. 462; Laws 1971, LB 282, § 2; Laws 2017, LB133, § 212.  
Effective date August 24, 2017.

**Cross References**

For other provisions applicable to ordinances, see sections 18-131, 18-132, 18-1724, and 19-3701.

**17-614 Ordinances; how enacted; title.**

(1) All ordinances and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the city council in a city of the second class or village board of trustees. The mayor of a city of the second class may vote when his or her vote would provide the additional vote required to attain the number of votes equal to a majority of the number of members elected to the city council, and the mayor shall, for the purpose of such vote, be deemed to be a member of the city council. Ordinances of a general or permanent nature shall be read by title on three different days unless three-fourths of the city council or village board of trustees vote to suspend this requirement, except that such requirement shall not be suspended for any ordinance for the annexation of territory. In case such requirement is suspended, the ordinances shall be read by title and then moved for final passage. Three-fourths of the city council or village board of trustees may require a reading of any such ordinance in full before enactment under either procedure set out in this section.

(2) Ordinances shall contain no subject which is not clearly expressed in the title, and, except as provided in section 19-915, no ordinance or section of such ordinance shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended and the ordinance or section so amended is repealed, except that:

(a) For an ordinance revising all the ordinances of the city of the second class or village, the title need only state that the ordinance revises all the ordinances of the city or village. Under such title all the ordinances may be revised in sections and chapters or otherwise, may be corrected, added to, and any part suppressed, and may be repealed with or without a saving clause as to the whole or any part without other title; and

(b) For an ordinance used solely to revise ordinances or code sections or to enact new ordinances or code sections in order to adopt statutory changes made by the Legislature which are specific and mandatory and bring the ordinances or code sections into conformance with state law, the title need only state that the ordinance revises those ordinances or code sections affected by or enacts ordinances or code sections generated by legislative changes. Under such title, all such ordinances or code sections may be revised, repealed, or enacted in sections and chapters or otherwise by a single ordinance without other title.

**Source:** Laws 1879, § 79, p. 223; R.S.1913, § 5154; C.S.1922, § 4329; Laws 1929, c. 47, § 1, p. 202; C.S.1929, § 17-520; R.S.1943,

§ 17-614; Laws 1969, c. 108, § 3, p. 510; Laws 1972, LB 1235, § 2; Laws 1994, LB 630, § 3; Laws 2001, LB 484, § 2; Laws 2003, LB 365, § 2; Laws 2013, LB113, § 2; Laws 2017, LB133, § 213.

Effective date August 24, 2017.

**17-615 Ordinances; passage; rules and regulations; proof.**

All ordinances of a city of the second class or village shall be passed pursuant to such rules and regulations as the city council or village board of trustees may provide. All such ordinances may be proved by the certificate of the city clerk or village clerk, under the seal of the city or village.

**Source:** Laws 1879, § 69, XXX, p. 217; Laws 1881, c. 23, § 8, XXX, p. 185; Laws 1885, c. 20, § 1, XXX, p. 176; Laws 1887, c. 12, § 1, XXX, p. 305; R.S.1913, § 5155; C.S.1922, § 4330; C.S.1929, § 17-521; R.S.1943, § 17-615; Laws 2017, LB133, § 214.  
Effective date August 24, 2017.

**17-616 Ordinances; contracts; appointments; vote; record.**

On the passage or adoption of every bylaw or ordinance, and every resolution or order to enter into a contract by the city council of a city of the second class or village board of trustees, the yeas and nays shall be called and recorded. To pass or adopt any bylaw, any ordinance, or any such resolution or order, a concurrence of a majority of the whole number of members elected to the city council or village board of trustees shall be required. All appointments of the officers by the city council or village board of trustees shall be made viva voce; and the concurrence of a like majority shall be required, and the names of those, and for whom they voted, on the vote resulting in an appointment, shall be recorded. The requirements of a roll call or viva voce vote shall be satisfied by a city or village which utilizes an electronic voting device which allows the yeas and nays of each city council member or member of the village board of trustees to be readily seen by the public.

**Source:** Laws 1879, § 76, p. 221; R.S.1913, § 5156; C.S.1922, § 4331; C.S.1929, § 17-522; R.S.1943, § 17-616; Laws 1978, LB 609, § 2; Laws 2017, LB133, § 215.  
Effective date August 24, 2017.

**ARTICLE 7**

**FISCAL MANAGEMENT**

Section

- 17-701. Fiscal year; commencement.
- 17-702. Property tax; general levy authorized; sale for delinquent taxes; additional levies.
- 17-703. Special assessments; relevy or reassess tax limit; refunding; when authorized; how paid.
- 17-706. Annual appropriation bill; contents.
- 17-708. Funds; expenditure; appropriation condition precedent.
- 17-709. Contracts; appropriation condition precedent.
- 17-710. Special assessments; expenditure; limitations.
- 17-711. Warrants; how executed.
- 17-713. Road tax; amount; when authorized.
- 17-714. Claims and accounts payable; filing; requirements; disallowance; notice; costs.
- 17-715. Claims; allowance; payment.

## Section

17-718. Voluntary fire departments; maintenance; tax; limitation.

17-720. Certificates of deposit; time deposits; security required.

**17-701 Fiscal year; commencement.**

The fiscal year of each city of the second class and village and of any public utility of a city of the second class or village commences on October 1 and extends through the following September 30 except as provided in the Municipal Proprietary Function Act.

**Source:** Laws 1879, § 85, p. 225; R.S.1913, § 5181; C.S.1922, § 4368; Laws 1927, c. 46, § 1, p. 194; C.S.1929, § 17-566; R.S.1943, § 17-701; Laws 1967, c. 78, § 1, p. 248; Laws 1969, c. 257, § 12, p. 937; Laws 1995, LB 194, § 5; Laws 2017, LB133, § 216.  
Effective date August 24, 2017.

## Cross References

Municipal Proprietary Function Act, see section 18-2801.

**17-702 Property tax; general levy authorized; sale for delinquent taxes; additional levies.**

(1) The city council or village board of trustees of each city of the second class or village shall, at the time and in the manner provided by law, cause to be certified to the county clerk the amount of tax to be levied upon the taxable value of all the taxable property of the city or village which the city or village requires for the purposes of the adopted budget statement for the ensuing year, including all special assessments and taxes assessed as provided by law. The county clerk shall place the same on the property tax lists to be collected in the manner provided by law for the collection of county taxes in the county where such city or village is situated. In all sales for any delinquent taxes for municipal purposes, if there are other delinquent taxes due from the same person or a lien on the same property, the sale shall be for all the delinquent taxes. Such sales and all sales made under or by virtue of this section or the provision of law herein referred to shall be of the same validity and in all respects be deemed and treated as though such sales had been made for the delinquent county taxes exclusively. Subject to section 77-3442, the maximum amount of tax which may be so certified, assessed, and collected shall not require a tax levy in excess of one dollar and five cents on each one hundred dollars upon the taxable value of all the taxable property within the corporate limits of such city or village for the purposes of the adopted budget statement, together with any special assessments or special taxes or amounts assessed as taxes and such sum as may be authorized by law for the payment of outstanding bonds and debts.

(2) Within the limitation of section 77-3442, the city council or village board of trustees of each city of the second class or village may certify an amount to be levied not to exceed ten and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property within such city or village for the purpose of establishing the sinking fund or funds authorized by sections 19-1301 to 19-1304. Nothing contained in subsection (1) or (2) of this section shall be construed to authorize an increase in the amount of levies for any specific municipal purpose or purposes elsewhere limited by law, whether limited in specific sums or by tax levies.

(3) When required by section 18-501, an additional levy of seven cents on each one hundred dollars upon the taxable value of all the taxable property within the city of the second class or village may be imposed.

**Source:** Laws 1879, § 82, p. 224; R.S.1913, § 5182; Laws 1915, c. 93, § 1, p. 235; Laws 1919, c. 61, § 2, p. 149; C.S.1922, § 4369; C.S.1929, § 17-567; Laws 1933, c. 30, § 1, p. 208; Laws 1937, c. 176, § 6, p. 697; Laws 1939, c. 12, § 6, p. 84; Laws 1941, c. 157, § 21, p. 623; C.S.Supp.,1941, § 17-567; R.S.1943, § 17-702; Laws 1945, c. 28, § 2, p. 140; Laws 1945, c. 29, § 2, p. 144; Laws 1953, c. 287, § 18, p. 940; Laws 1957, c. 39, § 2, p. 211; Laws 1965, c. 69, § 1, p. 289; Laws 1967, c. 79, § 1, p. 251; Laws 1969, c. 145, § 19, p. 683; Laws 1979, LB 187, § 55; Laws 1992, LB 719A, § 56; Laws 1996, LB 1114, § 31; Laws 2017, LB133, § 217.  
Effective date August 24, 2017.

**17-703 Special assessments; relevy or reassess tax limit; refunding; when authorized; how paid.**

(1) Whenever any special assessment upon any lot or lots, lands, or parcels of land in any city of the second class or village is found to be invalid and uncollectible, is adjudged to be void by a court of competent jurisdiction, or is paid under protest and recovered by suit, because of any defect, irregularity, or invalidity in any of the proceedings or on account of the failure to observe and comply with any of the conditions, prerequisites, and requirements of any statute or ordinance, the mayor and city council or chairperson and village board of trustees may relevy or reassess the special assessment upon the lot or lots, lands, or parcels of land in the same manner as other special assessments are levied, without regard to whether the formalities, prerequisites, or conditions prior to equalization have been had or not.

(2) If any city of the second class or village has levied special assessments for part or all of the cost of any public work or improvement, if the assessments have been finally held by the courts to be invalid and unenforceable, if the defects rendering such assessments invalid and unenforceable are of such character that they cannot be remedied by reassessment, and if part of the special assessments has been paid under mistake of law or fact into such city or village prior to such final holding, the mayor and city council or chairperson and village board of trustees shall establish a special fund in the budget statement annually which is sufficient to refund and repay over a period of consecutive years such special assessments erroneously paid, without interest to the person or persons entitled to receive the same, any and all such assessments or parts thereof as may have been so paid into the treasury of such city or village, as the case may be. The amount of tax annually budgeted for this special fund shall not require a tax levy in excess of ten and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village in any one year, and the additional levy shall be continued only for as many years as may be necessary to raise the total amount required for such purpose. Such assessments shall be refunded out of the special fund upon proper claims filed by the person or persons entitled to reimbursement. Such claim shall be audited, allowed, and ordered paid in the same manner as other claims against such city or village. All such reimbursements shall be made pro rata if there is not sufficient money on hand to repay them all at one

time. Such amount of tax for the special fund shall be specified in the adopted budget statement.

**Source:** Laws 1933, c. 30, § 1, p. 209; Laws 1937, c. 176, § 6, p. 698; Laws 1939, c. 12, § 6, p. 85; Laws 1941, c. 157, § 21, p. 624; C.S.Supp.,1941, § 17-567; R.S.1943, § 17-703; Laws 1945, c. 28, § 3, p. 141; Laws 1945, c. 29, § 3, p. 145; Laws 1953, c. 287, § 19, p. 941; Laws 1969, c. 145, § 20, p. 685; Laws 1979, LB 187, § 56; Laws 1992, LB 719A, § 57; Laws 2017, LB133, § 218; Laws 2017, LB317, § 1.  
Effective date August 24, 2017.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB133, section 218, with LB317, section 1, to reflect all amendments.

### **17-706 Annual appropriation bill; contents.**

The city council of a city of the second class and the village board of trustees shall adopt a budget statement pursuant to the Nebraska Budget Act, to be termed "The Annual Appropriation Bill", in which the city or village may appropriate such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such municipality.

**Source:** Laws 1879, § 86, p. 225; R.S.1913, § 5184; C.S.1922, § 4371; C.S.1929, § 17-569; R.S.1943, § 17-706; Laws 1967, c. 78, § 2, p. 249; Laws 1972, LB 1423, § 1; Laws 1993, LB 734, § 26; Laws 1995, LB 194, § 6; Laws 2017, LB133, § 219.  
Effective date August 24, 2017.

#### **Cross References**

Nebraska Budget Act, see section 13-501.

### **17-708 Funds; expenditure; appropriation condition precedent.**

The mayor and city council of a city of the second class or village board of trustees shall have no power to appropriate or to issue or draw any order or warrant on the city treasurer or village treasurer for money, unless the same has been appropriated or ordered by ordinance, or the claim for the payment of which such order or warrant is issued has been allowed according to the provisions of sections 17-714 and 17-715, and funds for the class or object out of which such claim is payable have been included in the adopted budget statement or transferred according to law.

**Source:** Laws 1879, § 88, p. 226; R.S.1913, § 5186; C.S.1922, § 4373; C.S.1929, § 17-571; Laws 1935, Spec. Sess., c. 10, § 10, p. 77; Laws 1941, c. 130, § 18, p. 502; C.S.Supp.,1941, § 17-571; R.S. 1943, § 17-708; Laws 1959, c. 63, § 2, p. 283; Laws 1961, c. 47, § 3, p. 185; Laws 1967, c. 78, § 3, p. 249; Laws 1969, c. 145, § 21, p. 685; Laws 1972, LB 1423, § 2; Laws 2017, LB133, § 220.  
Effective date August 24, 2017.

### **17-709 Contracts; appropriation condition precedent.**

No contract shall be made by the city council of a city of the second class or village board of trustees or any committee or member of such city council or village board of trustees, and no expense shall be incurred by any of the officers or departments of the municipality, whether the object of the expenditures shall

have been ordered by the city council or village board of trustees or not, unless an appropriation shall have been previously made concerning such expense, except as otherwise expressly provided in section 17-708.

**Source:** Laws 1879, § 89, p. 227; R.S.1913, § 5187; C.S.1922, § 4374; C.S.1929, § 17-572; R.S.1943, § 17-709; Laws 1967, c. 78, § 4, p. 251; Laws 2017, LB133, § 221.  
Effective date August 24, 2017.

#### **17-710 Special assessments; expenditure; limitations.**

All money received on special assessments shall be held by the city treasurer of a city of the second class or village treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made, and such money shall be used for no other purpose whatever, unless to reimburse such municipality for money expended for such improvement.

**Source:** Laws 1879, § 90, p. 227; R.S.1913, § 5188; C.S.1922, § 4375; C.S.1929, § 17-573; R.S.1943, § 17-710; Laws 2017, LB133, § 222.  
Effective date August 24, 2017.

#### **17-711 Warrants; how executed.**

All warrants drawn upon the city treasurer of a city of the second class or village treasurer must be signed by the mayor or chairperson of the village board of trustees and countersigned by the city clerk or village clerk, stating the particular fund to which the same is chargeable, the person to whom payable, and for what particular object. No money shall be otherwise paid than upon such warrants so drawn. Each warrant shall specify the amount included in the adopted budget statement for such fund upon which it is drawn and the amount already expended of such fund.

**Source:** Laws 1879, § 66, p. 210; R.S.1913, § 5190; C.S.1922, § 4380; C.S.1929, § 17-578; R.S.1943, § 17-711; Laws 1969, c. 145, § 22, p. 686; Laws 2017, LB133, § 223.  
Effective date August 24, 2017.

#### **17-713 Road tax; amount; when authorized.**

The city council or village board of trustees of a city of the second class or village shall, upon petition being filed with the city clerk or village clerk signed by a majority of the resident property owners of such city or village requesting such city council or village board of trustees to levy a tax upon the taxable valuation of the property in the city or village, make a levy as in such petition requested, not exceeding eighty-seven and five-tenths cents on each one hundred dollars of taxable valuation, and shall certify the same to the county board as other taxes are levied by the city or village, or certified, for the purpose of creating a fund. The fund shall be expended solely in the improvement of the public highways adjacent to the city or village and within five miles of such city or village, shall at all times be under the control and direction of the city council or village board of trustees, and shall be expended under the authority and direction of the city council or village board of trustees. The city council or village board of trustees is hereby granted the power and authority to employ

such person or persons as it may select for the performance of such work under such rules and regulations as it may by ordinance provide.

**Source:** Laws 1905, c. 32, § 1, p. 263; R.S.1913, § 5191; C.S.1922, § 4381; Laws 1925, c. 166, § 5, p. 438; C.S.1929, § 17-579; R.S.1943, § 17-713; Laws 1979, LB 187, § 57; Laws 1992, LB 719A, § 58; Laws 2017, LB133, § 224.  
Effective date August 24, 2017.

**17-714 Claims and accounts payable; filing; requirements; disallowance; notice; costs.**

(1) All liquidated and unliquidated claims and accounts payable against a city of the second class or village shall (a) be presented in writing, (b) state the name and address of the claimant and the amount of the claim, and (c) fully and accurately identify the items or services for which payment is claimed or the time, place, nature, and circumstances giving rise to the claim.

(2) As a condition precedent to maintaining an action for a claim, other than a tort claim as defined in section 13-903, the claimant shall file such claim within ninety days of the accrual of the claim in the office of the city clerk or village clerk.

(3) The city clerk or village clerk shall notify the claimant or his or her agent or attorney by letter mailed to the claimant's address within five days if the claim is disallowed by the city council or village board of trustees.

(4) No costs shall be recovered against such city or village in any action brought against it for any claim or for any claim allowed in part which has not been presented to the city council or village board of trustees to be audited, unless the recovery is for a greater sum than the amount allowed with the interest due.

**Source:** Laws 1879, § 80, p. 223; R.S.1913, § 5192; C.S.1922, § 4382; C.S.1929, § 17-580; R.S.1943, § 17-714; Laws 1955, c. 42, § 1, p. 157; Laws 1990, LB 1044, § 2; Laws 2017, LB133, § 225.  
Effective date August 24, 2017.

**17-715 Claims; allowance; payment.**

Upon the allowance of claims by the city council of a city of the second class or village board of trustees, the order for their payment shall specify the particular fund or appropriation out of which they are payable as specified in the adopted budget statement; and no order or warrant shall be drawn in excess of eighty-five percent of the current levy for the purpose for which it is drawn, unless there shall be sufficient money in the treasury at the credit of the proper fund for its payment. In the event there exists at the time such warrant is drawn, obligated funds from the federal government or the State of Nebraska, or both from the federal government and the State of Nebraska, for the general purpose or purposes of such warrant, then such warrant may be drawn in excess of eighty-five percent of the current levy for the purpose for which it is drawn to the additional extent of one hundred percent of such obligated federal or state funds. No claim shall be audited or allowed unless an order or warrant for the payment thereof may legally be drawn.

**Source:** Laws 1879, § 81, p. 223; Laws 1885, c. 18, § 1, p. 160; R.S.1913, § 5193; C.S.1922, § 4383; C.S.1929, § 17-581; R.S.1943,

§ 17-715; Laws 1969, c. 145, § 23, p. 686; Laws 1972, LB 693, § 1; Laws 2017, LB133, § 226.  
Effective date August 24, 2017.

**17-718 Voluntary fire departments; maintenance; tax; limitation.**

The city council in cities of the second class and board of trustees in villages having only voluntary fire departments or companies may levy a tax annually of not more than seven cents on each one hundred dollars upon the taxable value of all the taxable property within such cities or villages for the maintenance and benefit of such fire departments or companies. The amount of such tax shall be established at the beginning of the year and shall be included in the adopted budget statement. Upon collection of such tax, the city treasurer or village treasurer shall disburse the same upon the order of the chief of the fire department with the approval of the city council or village board of trustees.

**Source:** Laws 1921, c. 198, § 1, p. 720; C.S.1922, § 4391; C.S.1929, § 17-589; R.S.1943, § 17-718; Laws 1947, c. 38, § 1, p. 150; Laws 1953, c. 287, § 21, p. 943; Laws 1969, c. 96, § 1, p. 464; Laws 1969, c. 145, § 24, p. 687; Laws 1979, LB 187, § 58; Laws 1992, LB 719A, § 59; Laws 2017, LB133, § 227.  
Effective date August 24, 2017.

**17-720 Certificates of deposit; time deposits; security required.**

The city treasurer or village treasurer of cities of the second class and villages may, upon resolution of the mayor and city council or village board of trustees authorizing the same, purchase certificates of deposit from and make time deposits in any bank, capital stock financial institution, or qualifying mutual financial institution in the State of Nebraska to the extent that such certificates of deposit or time deposits are insured or guaranteed by the Federal Deposit Insurance Corporation. Deposits may be made in excess of the amounts so secured by the municipality, and the amount of the excess deposit shall be secured by a bond or by security given in the same manner as is provided for cities of the first class in sections 16-714 to 16-716 as of the time the deposit is made. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

**Source:** Laws 1969, c. 84, § 1, p. 424; Laws 1987, LB 440, § 8; Laws 1990, LB 825, § 1; Laws 1993, LB 157, § 3; Laws 1996, LB 1274, § 23; Laws 2001, LB 362, § 25; Laws 2009, LB259, § 11; Laws 2017, LB133, § 228.  
Effective date August 24, 2017.

**ARTICLE 8**

**BOARD OF PUBLIC WORKS IN CITIES OF THE SECOND CLASS**

Section	
17-801.	Board of public works; how created; members; appointment; removal; qualifications; terms.
17-802.	Board of public works; powers and duties; city council; approve budget.
17-802.01.	Board of public works; insurance plan; cooperation and participation.
17-803.	Board of public works; surplus funds; investment.
17-804.	Water commissioner and light commissioner; compensation; removal.
17-805.	Board of public works; organization; meetings; records.



## BOARD OF PUBLIC WORKS IN CITIES OF THE SECOND CLASS § 17-802.01

Section	
17-806.	Board members; oath; bond.
17-807.	Board members; interest in contracts prohibited.
17-808.	Bookkeeper and city clerk.
17-810.	Rates; power to fix.

### **17-801 Board of public works; how created; members; appointment; removal; qualifications; terms.**

Whenever any city of the second class has or is about to establish or acquire any system of waterworks, power plant, ice plant, gas plant, sewerage, heating, or lighting plant, or distribution system, the city council of such city may, by ordinance, create a board of public works, which shall consist of not less than three, nor more than six members, residents of such city, to be appointed by the mayor, subject to the approval of the city council. Members of the board of public works may be removed by the mayor and a majority of the members elected to the city council at any time. The term of the first members of the board of public works shall be one, two, three, or four years in the manner designated by the mayor, as the case may be, after which the term of each member shall be four years; and the terms of not more than two members shall expire at any one time.

**Source:** Laws 1935, c. 33, § 1, p. 138; C.S.Supp.,1941, § 17-701; R.S. 1943, § 17-801; Laws 1975, LB 162, § 1; Laws 2017, LB133, § 229.  
Effective date August 24, 2017.

### **17-802 Board of public works; powers and duties; city council; approve budget.**

The city council of a city of the second class may, by ordinance, confer upon a board of public works the active direction and supervision of any or all of the utility systems owned or operated by such city. The city council shall approve the budget of each proprietary function as provided in the Municipal Proprietary Function Act. Such board of public works shall have the power to operate any utility referred to it and to exercise all powers conferred by law upon such city for the operation and government of such utility to the same extent, in the same manner, and under the same restrictions as the city council could do if no such board of public works existed, except that such board of public works shall not make any expenditure or contract any indebtedness other than for ordinary running expenses, exceeding an amount established by the city council, without first obtaining the approval of the city council. The board of public works shall report to the city council at regular intervals as the city council may require.

**Source:** Laws 1935, c. 33, § 2, p. 139; Laws 1937, c. 34, § 1, p. 160; C.S.Supp.,1941, § 17-702; R.S.1943, § 17-802; Laws 1949, c. 29, § 2(1), p. 113; Laws 1983, LB 304, § 5; Laws 1993, LB 734, § 27; Laws 2017, LB133, § 230.  
Effective date August 24, 2017.

#### Cross References

Municipal Proprietary Function Act, see section 18-2801.

### **17-802.01 Board of public works; insurance plan; cooperation and participation.**

The mayor and city council of a city of the second class may, by ordinance, authorize and empower the board of public works to cooperate and participate in a plan of insurance designed and intended for the benefit of the employees of any public utility operated by the city. For that purpose the board of public works may make contributions to pay premiums or dues under such plan, authorize deductions from salaries of employees, and take such other steps as may be necessary to effectuate such plan of insurance.

**Source:** Laws 1949, c. 29, § 2(2), p. 113; Laws 2017, LB133, § 231.  
Effective date August 24, 2017.

#### **17-803 Board of public works; surplus funds; investment.**

Any surplus funds arising out of the operation of any municipal utilities by the board of public works, or by the city council of a city of the second class, where any of such utilities are not being operated by such a board, may be invested, if not invested pursuant to the provisions of any other law upon the subject, in like manner and subject to the same conditions as the investment of similar funds of cities of the first class, as provided in section 16-691.01.

**Source:** Laws 1937, c. 34, § 1, p. 160; C.S.Supp.,1941, § 17-702; R.S. 1943, § 17-803; Laws 1959, c. 51, § 1, p. 242; Laws 1961, c. 47, § 5, p. 187; Laws 2017, LB133, § 232.  
Effective date August 24, 2017.

#### **17-804 Water commissioner and light commissioner; compensation; removal.**

If a city of the second class has created a board of public works as provided in section 17-801, the water commissioner and light commissioner shall, subject to confirmation by the mayor and city council, be employed by such board at such reasonable compensation as may be agreed upon at the time of such employment and shall thereafter be under the jurisdiction of such board, any of the provisions of sections 17-501 to 17-560 to the contrary notwithstanding. Any water commissioner or light commissioner, under the jurisdiction and control of the board of public works, may be removed by the board, after an opportunity to be heard before the mayor and city council if he or she shall so request, for malfeasance, misfeasance, or neglect in office.

**Source:** Laws 1935, c. 33, § 2, p. 139; Laws 1937, c. 34, § 1, p. 161; C.S.Supp.,1941, § 17-702; R.S.1943, § 17-804; Laws 2017, LB133, § 233.  
Effective date August 24, 2017.

#### **17-805 Board of public works; organization; meetings; records.**

The members of the board of public works in a city of the second class shall organize as soon as practicable after their appointment, by electing a chairperson and secretary, who shall serve until the first meeting in June next following; and thereafter such board shall elect a chairperson and secretary at the first meeting in June each year. In the absence of the regular officers, temporary officers to serve in their places may be chosen by the members present at any meeting. The board of public works shall establish regular times for meetings and may adopt such rules as may be necessary or desirable for the conduct of business. The board of public works shall keep a record of its proceedings and, if there is a legal newspaper in or of general circulation in the city of the

second class, shall publish the minutes of each meeting in such legal newspaper within thirty days after the meeting is held.

**Source:** Laws 1935, c. 33, § 3, p. 139; C.S.Supp.,1941, § 17-703; R.S. 1943, § 17-805; Laws 2017, LB133, § 234.  
Effective date August 24, 2017.

**17-806 Board members; oath; bond.**

Each of the members of a board of public works of a city of the second class shall take an oath to discharge faithfully the duties of his or her office before entering upon the discharge of such office. Each of the members of such board before entering upon the duties of his or her office shall be required to give bond to the city with corporate surety. Such bond shall be in the sum of five thousand dollars and shall be conditioned for the faithful performance of the duties of member of the board of public works; and the surety on such bond shall be approved by the mayor and city council and shall be filed with the city treasurer. The premium on such bond shall be paid out of any public utility fund designated by the mayor and city council.

**Source:** Laws 1935, c. 33, § 4, p. 140; C.S.Supp.,1941, § 17-704; R.S. 1943, § 17-806; Laws 2017, LB133, § 235.  
Effective date August 24, 2017.

**17-807 Board members; interest in contracts prohibited.**

No member of the board of public works of a city of the second class shall ever be financially interested, directly or indirectly, in any contract entered into by the board on behalf of the city for more than ten thousand dollars in one year.

**Source:** Laws 1935, c. 33, § 5, p. 140; C.S.Supp.,1941, § 17-705; R.S. 1943, § 17-807; Laws 1973, LB 24, § 3; Laws 2017, LB133, § 236.  
Effective date August 24, 2017.

**17-808 Bookkeeper and city clerk.**

If the board of public works determines that the best interests of the city of the second class and the patrons of the utility will be better or more economically served, the board may employ the duly elected city clerk as ex officio bookkeeper and collector for the utility or utilities, and he or she may be paid a reasonable salary for the extra services required of him or her in such position in addition to his or her salary as city clerk.

**Source:** Laws 1935, c. 33, § 6, p. 140; C.S.Supp.,1941, § 17-706; R.S. 1943, § 17-808; Laws 2017, LB133, § 237.  
Effective date August 24, 2017.

**17-810 Rates; power to fix.**

Rates or charges for service by a board of public works for a city of the second class may be fixed or changed by resolution duly adopted by such board of public works.

**Source:** Laws 1935, c. 33, § 8, p. 140; C.S.Supp.,1941, § 17-708; R.S. 1943, § 17-810; Laws 2017, LB133, § 238.  
Effective date August 24, 2017.

**CITIES OF THE SECOND CLASS AND VILLAGES**

**ARTICLE 9**

**PARTICULAR MUNICIPAL ENTERPRISES**

**(a) PUBLIC UTILITIES SERVICE**

Section	
17-903.	Utilities; contracts for service; approval of electors; bonds; interest; taxes.
17-905.	Utilities; acquisition; revenue bonds; issuance; when authorized.
17-905.01.	Gas distribution system or bottled gas plant; lease by city; terms; submission to election.
17-906.	Power plant; construction; eminent domain; procedure.
17-907.	Power plant; transmission lines; right-of-way.
17-908.	Power plant; construction; election; bonds; interest; redemption.
17-909.	Power plant; operation and extension; tax authorized.
17-910.	Joint power plant; construction; approval of electors.
17-911.	Joint power plant; bonds; election; interest.
17-912.	Joint power plant; operation and extension; tax.

**(b) SEWERAGE SYSTEM**

17-913.	Sewers; resolution to construct, purchase, or acquire; contents; estimate of cost; special assessment.
17-914.	Sewers; resolution to construct; publication; hearing.
17-915.	Repealed. Laws 2017, LB133, § 331.
17-916.	Sewers; resolution to construct; petition in opposition; effect.
17-917.	Sewers; resolution to construct, purchase, or acquire; vote required.
17-918.	Sewers; construction; contracts; notice; bids; acceptance.
17-919.	Sewers; acceptance by engineer; approval; cost; assessments; notice.
17-920.	Sewers; assessments; hearing; equalization; payable in installments; interest.
17-921.	Sewers; special assessments; levy; collection.
17-922.	Sewers; assessments; interest; exempt property; cost; how paid.
17-923.	Sewers; assessments; when due; interest.
17-924.	Sewers; assessments; sinking fund; purpose.
17-925.	Sewers; bonds; term; rate of interest; partial payments; final payment; contractor; interest; special assessments; tax authorized.
17-925.01.	Sewers; water utilities; maintenance and repair; tax authorized; service rate in lieu of tax; lien.
17-925.02.	Sewers; rental charges; collection.
17-925.03.	Sewers; rental charges; reduction in taxes.
17-925.04.	Sewers; rental charges; cumulative to service rate for maintenance and repair.

**(c) CEMETERIES**

17-926.	Cemetery; acquisition; condemnation; procedure.
17-933.	Cemetery; acquisition; title.
17-934.	Cemetery; existing cemetery association; transfer to; conditions.
17-935.	Existing cemetery association; transfer; deeds; how executed.
17-936.	Existing cemetery association; transfer of funds.
17-937.	Existing cemetery association; trustees; oath; bond; vacancy; how filled.
17-938.	Cemetery; maintenance; tax; forfeiture of lot; resale; reclamation of lot; procedure.
17-939.	Cemetery; acquisition; bonds; interest; approval of electors required.
17-940.	Cemetery; improvement.
17-941.	Cemetery; lots; conveyance.
17-942.	Cemetery; lots; ownership and use; regulations.
17-943.	Cemetery; protection; rules and regulations.
17-945.	Cemetery association; trustees; conveyances.
17-946.	Cemetery association; powers of board of trustees; income; use.
17-947.	Cemetery association; formation; funds; transfer to.

## Section

## (d) RECREATION CENTERS

- 17-948. Recreation and conservation; real estate; acquisition by gift or purchase; title.
- 17-949. Recreation and conservation; real estate; regulation and control; penalties authorized.
- 17-950. Recreation and conservation; real estate; acquisition; purposes; bonds; interest; approval of electors required.
- 17-951. Facilities; maintenance and improvement; tax authorized.
- 17-952. Board of commissioners; members; duties.

## (e) PUBLIC BUILDINGS

- 17-953. Public buildings; acquisition or construction; approval of electors required; exception.
- 17-953.01. Purchase or construction of public buildings without bond issue; remonstrance petition; procedure.
- 17-954. Public buildings; purchase or construction; bonds; approval of electors required; exception.
- 17-955. Public buildings; maintenance; tax.

## (f) REFRIGERATION

- 17-957. Cold storage plants; construction; cost; tax; bonds.
- 17-958. Cold storage plants; bonds; approval of electors; interest; redemption.
- 17-959. Cold storage plants; operation and extension; tax.
- 17-960. Cold storage plants; management; rates.

## (g) MEDICAL AND HOUSING FACILITIES

- 17-962. Gift or devise; approval by city council or village board of trustees.
- 17-963. Facility; acquisition or construction; issuance of bonds; interest; election.
- 17-964. Facility; maintenance; tax.
- 17-965. Facility fund; established; custodian.
- 17-966. Facility board; members; duties; powers; warrants.

## (h) LIBRARIES

- 17-967. Bonds; city of the second class or village; municipal library; issuance; interest; conditions; limitations; tax levy.
- 17-968. Bonds; issuance; record.
- 17-969. Bonds; sinking fund; interest; levy.

## (i) WATER SERVICE DISTRICT

- 17-970. Water service districts; establishment; ordinance.
- 17-971. Water service districts; improvements; protest; effect; special assessments.
- 17-973. Water service district; assessments; lien; date due; payable.
- 17-974. Water service district; assessments; delinquent; interest; rate; payment.
- 17-976. Water service districts; cost of improvements; bonds; interest; issuance; tax; levy.

## (a) PUBLIC UTILITIES SERVICE

**17-903 Utilities; contracts for service; approval of electors; bonds; interest; taxes.**

Before any city of the second class or village shall make any contract with any person or corporation within or without such city or village for the furnishing of electricity, power, steam, or other product to such city or village, or any such municipal plant within such city or village, the question shall be submitted to the electors voting at any regular or special election upon the proposition. Such city of the second class or village may, by a majority vote at such election, vote bonds or taxes for the purpose of defraying the cost of such transmission line and connection with any person, firm, corporation, or other

city or village with which it may enter into a contract for the purchasing of electricity, power, steam, or other product. The question of issuing bonds for any of the purposes provided in this section shall be submitted to the electors at an election held for that purpose, after not less than twenty days' notice thereof shall have been given by publication in a legal newspaper in or of general circulation in such municipality. Such bonds may be issued only when a majority of the electors voting on the question favor their issuance. Such bonds shall bear interest, payable annually or semiannually, and shall be payable any time the municipality may determine at the time of their issuance, but in not more than twenty years after their issuance. The city council or village board of trustees shall levy annually a sufficient tax to maintain, operate, and extend any system or plant and to provide for the payment of the interest on, and the principal of, any bonds that may have been issued as provided in this section. If no tax or issuance of bonds is required, any city of the second class or village may by resolution of the city council or village board of trustees contract for the furnishing of electricity at retail to such city or village, or to any electric plant within such city or village, with any public power district, or an electric cooperative which cooperative has an approved retail service area adjoining such city or village.

**Source:** Laws 1917, c. 104, § 1, p. 275; Laws 1919, c. 49, § 1, p. 143; C.S.1922, § 4317; C.S.1929, § 17-508; R.S.1943, § 17-903; Laws 1965, c. 58, § 4, p. 268; Laws 1969, c. 83, § 4, p. 420; Laws 1969, c. 51, § 49, p. 302; Laws 2017, LB133, § 239.  
Effective date August 24, 2017.

**17-905 Utilities; acquisition; revenue bonds; issuance; when authorized.**

Supplemental to any existing law on the subject and in lieu of the issuance of general obligation bonds, or the levying of taxes upon property, as by law provided, any city of the second class or any village may construct, purchase, or otherwise acquire a waterworks plant or a water system, or a gas plant or a gas system, including a natural or bottled gas plant, gas distribution system, or gas pipelines, either within or without the corporate limits of the city or village, and real and personal property needed or useful in connection therewith, and pay the cost thereof by pledging and hypothecating the revenue and earnings of any waterworks plant or water system, or gas plant or gas system, including a natural or bottled gas plant, gas distribution system, or gas pipelines, owned or to be owned by the city or village. In the exercise of the authority granted in this section, the city or village may issue and sell revenue bonds or debentures and enter into such contracts in connection therewith as may be proper and necessary. Such revenue bonds or debentures shall be a lien only upon the revenue and earnings of the waterworks plant or water system, gas plant or gas system, including a natural or bottled gas plant, gas distribution system, or gas pipelines, owned or to be owned by the city or village. No such city or village shall pledge or hypothecate the revenue and earnings of any waterworks plant or water system, or gas plant or gas system, including a natural or bottled gas plant, gas distribution system or gas pipelines, nor issue revenue bonds or debentures, as authorized in this section, until the proposition relating thereto has been submitted in the usual manner to the qualified voters of such city or village at a general or special election and approved by a majority of the electors voting on the proposition submitted. Such proposition shall be submitted, whenever requested, within thirty days after a sufficient petition signed by

the qualified voters of such city or village equal in number to twenty percent of the vote cast at the last general municipal election held in such city or village is filed with the city clerk or village clerk, as the case may be. Three weeks' notice of the submission of the proposition shall be given by publication in a legal newspaper in or of general circulation in such city or village. The requirement for a vote of the electors shall not apply when such city or village seeks to pledge or hypothecate such revenue or earnings or issue revenue bonds or debentures solely for the maintenance, extension, or enlargement of any waterworks plant or water system, or any gas plant or any gas system, including a natural or bottled gas plant, a gas distribution system, or gas pipelines, owned by such city or village.

**Source:** Laws 1941, c. 22, § 2, p. 113; C.S.Supp.,1941, § 17-596; R.S. 1943, § 17-905; Laws 2017, LB133, § 240.  
Effective date August 24, 2017.

**17-905.01 Gas distribution system or bottled gas plant; lease by city; terms; submission to election.**

Any city of the second class or any village which constructs a gas distribution system, or purchases or otherwise acquires a bottled gas plant, within the corporate limits of the city or village as provided in section 17-905, may lease any such facility or facilities to any such person, persons, corporation, or corporations as the city council or village board of trustees may select, upon such terms and conditions as it shall deem advisable. If there are any revenue bonds outstanding or to be outstanding at the time the lease becomes effective, for which the revenue and earnings of such facility or facilities are or shall be pledged and hypothecated, the net lease payments shall be sufficient to pay the principal and interest on such revenue bonds as the same become due. Such proposition shall be first submitted to the qualified voters of such city of the second class or village in the manner set forth in section 17-905, to be submitted either independently of or in conjunction with the proposition set forth in section 17-905.

**Source:** Laws 1963, c. 69, § 1, p. 270; Laws 2017, LB133, § 241.  
Effective date August 24, 2017.

**17-906 Power plant; construction; eminent domain; procedure.**

Any city of the second class or village is hereby authorized and empowered to erect a power plant, electric or other light works outside the corporate limits of such city or village and to acquire real estate required for such power plant, electric or other light works. Such city or village in establishing and erecting such power plant, electric or other light works shall have the right to purchase or take private property for the purpose of erecting such power plant, electric or other light works and constructing, running, and extending its transmission line. In all cases such city or village shall pay to such person or persons whose property shall be taken or injured thereby such compensation therefor as may be agreed upon or as shall be allowed by lawful condemnation proceedings. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724, except as to property specifically excluded by section 76-703 and as to which sections 19-701 to 19-707 are applicable.

**Source:** Laws 1921, c. 192, § 1, p. 711; C.S.1922, § 4394; C.S.1929, § 17-601; R.S.1943, § 17-906; Laws 1951, c. 101, § 59, p. 474; Laws 2017, LB133, § 242.  
Effective date August 24, 2017.

**17-907 Power plant; transmission lines; right-of-way.**

A city of the second class or village is hereby given, for the purpose of erecting and operating a power plant, electric or other light works as provided in section 17-906, a right-of-way over and the right to erect and maintain transmission lines upon, within, and across any of the public highways of the state, subject to sections 75-709 to 75-724.

**Source:** Laws 1921, c. 192, § 1, p. 711; C.S.1922, § 4394; C.S.1929, § 17-601; R.S.1943, § 17-907; Laws 1992, LB 866, § 1; Laws 2017, LB133, § 243.  
Effective date August 24, 2017.

**17-908 Power plant; construction; election; bonds; interest; redemption.**

Before any city of the second class or village makes any contract with any person or corporation relating in any manner whatever to the erection of a proposed power plant, electric or other light works as provided in section 17-906, the question as to whether such power plant, electric or other light works shall be erected shall be duly submitted to the electors voting at any regular or special election upon the proposition, and such city of the second class or village may by a majority of the votes cast at such election vote bonds in an amount not in excess of seven percent of the taxable valuation of such city or village for the purpose of defraying the cost of such plant. The question of issuing such bonds shall be submitted to the electors at an election held for that purpose after not less than thirty days' notice thereof has been given by publication in a legal newspaper in or of general circulation in such city or village. Such bonds shall bear interest, payable annually or semiannually, and shall be payable any time the city or village may determine at the time of their issuance but in not more than twenty years after their issuance. The city or village shall have the option of paying any or all of such bonds at any time after five years from their date.

**Source:** Laws 1921, c. 192, § 1, p. 712; C.S.1922, § 4394; C.S.1929, § 17-601; R.S.1943, § 17-908; Laws 1969, c. 51, § 50, p. 304; Laws 1971, LB 534, § 15; Laws 1992, LB 719A, § 60; Laws 2017, LB133, § 244.  
Effective date August 24, 2017.

**17-909 Power plant; operation and extension; tax authorized.**

The city council or village board of trustees of a city of the second class or village shall levy annually a sufficient tax to maintain, operate, and extend any power plant, electric or other light works as provided in section 17-906 and to provide for the payment of the interest on the principal of any bonds that may have been issued as provided in section 17-908.

**Source:** Laws 1921, c. 192, § 1, p. 712; C.S.1922, § 4394; C.S.1929, § 17-601; R.S.1943, § 17-909; Laws 2017, LB133, § 245.  
Effective date August 24, 2017.

**17-910 Joint power plant; construction; approval of electors.**

Two or more cities of the second class or villages may jointly erect a power plant, electric or other light works as provided in section 17-906 which shall serve such respective cities or villages, and such power plant, electric or other



light works may be owned and operated jointly by such respective cities or villages. Such cities or villages shall have the same rights and privileges as are in sections 17-906 to 17-909 granted to any single city or village. Before such cities or villages shall make any contract with any person or corporation relating in any manner whatever to the erection of such proposed power plant, electric or other light works, the question as to whether such jointly owned and operated power plant, electric or other light works shall be erected shall first be duly submitted to the electors of the respective cities or villages contemplating the erection of such power plant, electric or other light works and be approved by a sixty percent majority of the voters in each of such cities or villages in the manner provided in section 17-908.

**Source:** Laws 1921, c. 192, § 2, p. 712; C.S.1922, § 4395; C.S.1929, § 17-602; R.S.1943, § 17-910; Laws 2017, LB133, § 246.  
Effective date August 24, 2017.

#### **17-911 Joint power plant; bonds; election; interest.**

Cities of the second class or villages contemplating the erection of a joint power plant, electric or other light works under section 17-910 may vote joint bonds in an amount not in excess of seven percent of the valuation of such cities or villages for the purpose of defraying the cost of such power plant, electric or other light works. The question of issuing such joint bonds for the purpose contemplated shall be submitted to the electors of the respective cities or villages interested at an election held for that purpose in each of such cities or villages after notice of such election for not less than twenty days shall have been given by publication in the manner provided in section 17-908. Such bonds may be issued only when a majority of the electors in each of the cities or villages interested and voting on the question favor their issuance. If in any one of such cities or villages voting on such question a majority of the electors voting in such city or village shall fail to favor the issuance of such joint bonds then the entire election in all of the cities or villages voting shall be deemed void and of no effect. Such joint bonds shall bear interest payable annually or semiannually and shall be payable any time the cities or villages may determine at the time of their issuance, but in not more than twenty years after their issuance, with the option of paying any or all of such bonds at any time after five years from their date.

**Source:** Laws 1921, c. 192, § 2, p. 713; C.S.1922, § 4395; C.S.1929, § 17-602; R.S.1943, § 17-911; Laws 1969, c. 51, § 51, p. 304; Laws 1971, LB 534, § 16; Laws 2017, LB133, § 247.  
Effective date August 24, 2017.

#### **17-912 Joint power plant; operation and extension; tax.**

The city councils or village boards of trustees of the cities of the second class or villages issuing joint bonds under section 17-911 shall levy annually a sufficient tax to maintain and operate and extend the power plant, electric or other light work and to provide for the payment of interest on, and principal of, any bonds that may have been issued as provided in section 17-911.

**Source:** Laws 1921, c. 192, § 2, p. 713; C.S.1922, § 4395; C.S.1929, § 17-602; R.S.1943, § 17-912; Laws 2017, LB133, § 248.  
Effective date August 24, 2017.

## (b) SEWERAGE SYSTEM

**17-913 Sewers; resolution to construct, purchase, or acquire; contents; estimate of cost; special assessment.**

When the city council of any city of the second class or the village board of trustees deems it advisable or necessary to build, reconstruct, purchase, or otherwise acquire a sanitary sewer system, a sanitary or storm water sewer, a sewage disposal plant, or pumping stations or sewer outlets for any such city or village, constructed or to be constructed in whole or in part inside or outside of such city or village, it shall declare the advisability and necessity for such system, sewer, plant, station, or outlet in a proposed resolution, which, in the case of pipe sewer construction, shall state the kinds of pipe proposed to be used, and shall state the size or sizes and kinds of sewers proposed to be constructed, and shall designate the location and terminal points thereof. If it is proposed to construct disposal plants, pumping stations, or outlet sewers, the resolution shall refer to the plans and specifications which shall have been made and filed before the publication of such resolution by the city engineer or village engineer or by the engineer who has been employed by any such city or village for such purpose. If it is proposed to purchase or otherwise acquire a sanitary sewer system, a sanitary or storm water sewer, a sewage disposal plant, or pumping stations or sewer outlets, the resolution shall state the price and conditions of the purchase or how the system, sewer, plant, station, or outlet is being acquired. Such engineer shall also make and file, prior to the publication of such resolution, an estimate of the total cost of the proposed improvement. The proposed resolution shall state the amount of such estimated cost. The city council or village board of trustees may assess, to the extent of special benefits, the cost of such portions of the improvements as are local improvements, upon properties found specially benefited thereby as a special assessment. The resolution shall state the outer boundaries of the district or districts in which it is proposed to make special assessments.

**Source:** Laws 1919, c. 189, § 1, p. 427; Laws 1921, c. 281, § 1, p. 926; C.S.1922, § 4337; Laws 1923, c. 143, § 1, p. 355; C.S.1929, § 17-528; R.S.1943, § 17-913; Laws 1947, c. 39, § 1, p. 151; Laws 2015, LB361, § 36; Laws 2017, LB133, § 249.  
Effective date August 24, 2017.

**17-914 Sewers; resolution to construct; publication; hearing.**

Notice of the time when any resolution under section 17-913 shall be set for consideration before the city council or village board of trustees shall be given by at least two publications in a legal newspaper in or of general circulation in the city or village, which publication shall contain the entire wording of the resolution. The last publication shall be not less than five days nor more than two weeks prior to the time set for hearing of objections to the passage of any such resolution, at which hearing the owners of the property which might become subject to assessment for the contemplated improvement may appear and make objections to the proposed improvement. Following the publication, the resolution may be amended and passed or passed as proposed.

**Source:** Laws 1919, c. 189, § 1, p. 428; C.S.1922, § 4338; C.S.1929, § 17-529; R.S.1943, § 17-914; Laws 2017, LB133, § 250.  
Effective date August 24, 2017.

**17-915 Repealed. Laws 2017, LB133, § 331.****17-916 Sewers; resolution to construct; petition in opposition; effect.**

If a petition opposing a resolution proposed under section 17-913, signed by property owners representing a majority of the front footage which may become subject to assessment for the cost in any proposed lateral sewer district, be filed with the city clerk or village clerk within three days before the date of the meeting for the hearing on such resolution, such resolution shall not be passed.

**Source:** Laws 1919, c. 189, § 4, p. 428; C.S.1922, § 4340; C.S.1929, § 17-531; R.S.1943, § 17-916; Laws 2017, LB133, § 251.  
Effective date August 24, 2017.

**17-917 Sewers; resolution to construct, purchase, or acquire; vote required.**

Upon compliance with sections 17-913 to 17-916, the city council or village board of trustees may by resolution order the making, reconstruction, purchase, or otherwise acquiring of any of the improvements provided for in section 17-913. The vote upon any such resolution shall be as required by section 17-616.

**Source:** Laws 1919, c. 189, § 5, p. 429; C.S.1922, § 4341; C.S.1929, § 17-532; R.S.1943, § 17-917; Laws 1947, c. 39, § 2, p. 152; Laws 2017, LB133, § 252.  
Effective date August 24, 2017.

**17-918 Sewers; construction; contracts; notice; bids; acceptance.**

After ordering any improvements as provided for in section 17-917, the city council or village board of trustees may enter into a contract for the construction of such improvements in one or more contracts, but no work shall be done or contract let until notice to contractors has been published in a legal newspaper in or of general circulation in such city or village. The notice shall be published in at least two issues of such newspaper and shall state the extent of the work, and the kinds of material to be bid upon, including in such notice all kinds of material mentioned in the resolution specified in section 17-913, the amount of the engineer's estimate of the cost of such improvements, and the time when bids will be received. The work shall be done under written contract with the lowest responsible bidder on the material selected after the bids are opened and in accordance with the requirements of the plans and specifications. The city council or village board of trustees may reject any or all bids received and advertise for new bids in accordance with this section.

**Source:** Laws 1919, c. 189, § 6, p. 429; Laws 1921, c. 281, § 2, p. 926; C.S.1922, § 4342; C.S.1929, § 17-533; R.S.1943, § 17-918; Laws 1975, LB 112, § 3; Laws 2017, LB133, § 253.  
Effective date August 24, 2017.

**17-919 Sewers; acceptance by engineer; approval; cost; assessments; notice.**

After the completion of any work or purchase or otherwise acquiring the improvements authorized pursuant to section 17-913, the engineer shall file with the city clerk or village clerk a certificate of acceptance, which acceptance shall be approved by the city council or village board of trustees by resolution. The city council or village board of trustees shall then require the engineer to

make a complete statement of all the costs of any such improvement and a plat of the property in the district and a schedule of the amount proposed to be assessed against each separate piece of property in such district, which shall be filed with the city clerk or village clerk within ten days from date of acceptance of the work, purchase, or otherwise acquiring the system. The city council or village board of trustees shall then order the city clerk or village clerk to give notice that such plat and schedules are on file in his or her office and that all objections thereto, or to prior proceedings on account of errors, irregularities, or inequalities, not made in writing and filed with the city clerk or village clerk within twenty days after the first publication of such notice, shall be deemed to have been waived. Such notice shall be given by two publications in a legal newspaper in or of general circulation in such city or village. Such notice shall state the time and place where objections, filed as provided for in this section, shall be considered by the city council or village board of trustees.

**Source:** Laws 1919, c. 189, § 7, p. 430; C.S.1922, § 4343; C.S.1929, § 17-534; R.S.1943, § 17-919; Laws 1947, c. 39, § 3, p. 152; Laws 1963, c. 75, § 1, p. 278; Laws 2017, LB133, § 254. Effective date August 24, 2017.

**17-920 Sewers; assessments; hearing; equalization; payable in installments; interest.**

The hearing on the proposed assessment under section 17-919 shall be held by the city council or village board of trustees, sitting as a board of adjustment and equalization, at the time specified in the notice which shall be not less than twenty days nor more than thirty days after the date of first publication unless adjourned. Such session may be adjourned, with provisions for proper notice of such adjournment. At such meeting, the proposed assessment shall be adjusted and equalized with reference to benefits resulting from the improvement and shall not exceed such benefits. If any special assessment be payable in installments, each installment shall draw interest payable semiannually or annually from the date of levy until due. Such delinquent installments shall draw interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, until paid.

**Source:** Laws 1919, c. 189, § 8, p. 430; C.S.1922, § 4344; C.S.1929, § 17-535; Laws 1935, c. 136, § 21, p. 534; C.S.Supp.,1941, § 17-535; R.S.1943, § 17-920; Laws 1949, c. 27, § 1, p. 100; Laws 1957, c. 34, § 1, p. 198; Laws 1959, c. 64, § 4, p. 288; Laws 1969, c. 51, § 52, p. 305; Laws 1980, LB 933, § 19; Laws 1981, LB 167, § 20; Laws 2017, LB133, § 255. Effective date August 24, 2017.

**17-921 Sewers; special assessments; levy; collection.**

After the equalization of special assessments as required by section 17-920, the special assessments shall be levied by the mayor and city council or the village board of trustees, upon all lots or parcels of ground within the district specified which are benefited by reason of the improvement. The special assessments may be relieved if, for any reason, the levy thereof is void or not enforceable and in an amount not exceeding the previous levy. Such levy shall be enforced as a special assessment, and any payments thereof under previous levies shall be credited to the person or property making the same. All special

assessments made for such purposes shall be collected in the same manner as other special assessments.

**Source:** Laws 1919, c. 189, § 9, p. 430; C.S.1922, § 4345; C.S.1929, § 17-536; R.S.1943, § 17-921; Laws 2015, LB361, § 37; Laws 2017, LB133, § 256.  
Effective date August 24, 2017.

**17-922 Sewers; assessments; interest; exempt property; cost; how paid.**

No city council or village board of trustees shall cause to be assessed for any of the improvements authorized pursuant to section 17-913, property by law not assessable, or property not included within the district defined in the preliminary resolution, and shall not assess property not benefited. The cost of sewers at the intersection of streets and alleys and opposite property belonging to the United States Government, or other property not assessable, may be included with the cost of the rest of the work and may be assessed on the property within the district, if benefited by the improvement to such extent, or may be paid from unappropriated money in the general fund. The cost of the improvements shall draw interest from the date of acceptance thereof by the city council or village board of trustees.

**Source:** Laws 1919, c. 189, § 10, p. 431; C.S.1922, § 4346; C.S.1929, § 17-537; R.S.1943, § 17-922; Laws 1969, c. 51, § 53, p. 305; Laws 2017, LB133, § 257.  
Effective date August 24, 2017.

**17-923 Sewers; assessments; when due; interest.**

All special assessments provided for in section 17-921 shall become due in fifty days after the date of the levy and may be paid within that time without interest, but if not so paid they shall bear interest thereafter until delinquent. Such assessment shall become delinquent in equal annual installments over such period of years as the city council or village board of trustees may determine at the time of making the levy. Delinquent installments shall bear interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, until paid and shall be collected in the usual manner for the collection of taxes.

**Source:** Laws 1919, c. 189, § 11, p. 431; C.S.1922, § 4347; Laws 1923, c. 143, § 2, p. 356; C.S.1929, § 17-538; R.S.1943, § 17-923; Laws 1949, c. 27, § 2, p. 100; Laws 1953, c. 35, § 1, p. 126; Laws 1959, c. 64, § 5, p. 288; Laws 1969, c. 51, § 54, p. 306; Laws 1980, LB 933, § 20; Laws 1981, LB 167, § 21; Laws 2017, LB133, § 258.  
Effective date August 24, 2017.

**17-924 Sewers; assessments; sinking fund; purpose.**

All the special assessments provided for in section 17-921 shall, when levied, constitute a sinking fund for the purpose of paying the cost of the improvements authorized pursuant to section 17-913 with allowable interest thereon, and shall be solely and strictly applied to such purpose to the extent required. Any excess assessments may be transferred to such other fund or funds as the

city council or village board of trustees may deem advisable after fully discharging the purposes for which they were levied.

**Source:** Laws 1919, c. 189, § 13, p. 432; C.S.1922, § 4349; C.S.1929, § 17-539; R.S.1943, § 17-924; Laws 2017, LB133, § 259.  
Effective date August 24, 2017.

**17-925 Sewers; bonds; term; rate of interest; partial payments; final payment; contractor; interest; special assessments; tax authorized.**

For the purpose of paying the cost of the improvements authorized pursuant to section 17-913, the city council of any city of the second class or village board of trustees of any village, after such improvements have been completed and accepted, shall have the power to issue negotiable bonds of such city or village, to be called Sewer Bonds, payable in not exceeding twenty years and bearing interest payable annually or semiannually, which may either be sold by the city or village or delivered to the contractor in payment for the work, but in either case for not less than their par value. For the purpose of making partial payments as the work progresses, warrants may be issued by the mayor and city council or by the village board of trustees upon certificates of the engineer in charge showing the amount of work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project, in a sum not exceeding ninety-five percent of the cost of such project and upon the completion and acceptance of the work issue a final warrant for a balance of the amount due the contractor, which warrants shall be redeemed and paid upon the sale of the bonds issued and sold. The city or village shall pay to the contractor interest at the rate of eight percent per annum on the amounts due on partial and final payments beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the governing body and running until the date that the warrant is tendered to the contractor. All special assessments which may be levied upon property specially benefited by such work or improvements shall, when collected, be set aside and constitute a sinking fund for the payment of the interest and principal of such bonds. There shall be levied annually upon all the taxable property in such city or village a tax, which, together with such sinking fund derived from special assessments, shall be sufficient to meet payments of interest and principal as the same become due. Such tax shall be known as the sewer tax and shall be payable annually in money.

**Source:** Laws 1919, c. 189, § 14, p. 432; C.S.1922, § 4350; C.S.1929, § 17-540; Laws 1931, c. 34, § 1, p. 126; Laws 1935, c. 35, § 1, p. 146; C.S.Supp.,1941, § 17-540; R.S.1943, § 17-925; Laws 1963, c. 70, § 2, p. 272; Laws 1969, c. 51, § 55, p. 306; Laws 1974, LB 636, § 4; Laws 2017, LB133, § 260.  
Effective date August 24, 2017.

**17-925.01 Sewers; water utilities; maintenance and repair; tax authorized; service rate in lieu of tax; lien.**

The mayor and city council of any city of the second class or the village board of trustees is hereby authorized, after the establishment of a system of sewerage and at the time of levying other taxes for city or village purposes, to levy a tax of not more than three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village for the

purpose of creating a fund to be used for the maintenance and repairing of any sewer or water utilities in such city or village. In lieu of the levy of such tax, the mayor and city council or the village board of trustees may establish by ordinance such rates for such sewer service as may be deemed to be fair and reasonable, to be collected from either the owner or the person, firm, or corporation requesting the services at such times, either monthly, quarterly, or otherwise, as may be specified in the ordinance. All sewer charges shall be a lien upon the premises or real estate for which the same is used or supplied. Such lien shall be enforced in such manner as the city council or village board of trustees provides by ordinance. The charges thus made when collected shall be placed either in a separate fund or in a combined water and sewer fund and used exclusively for the purpose of maintenance and repairs of the sewer system, or the water and sewer system, in such city or village.

**Source:** Laws 1903, c. 22, § 9, p. 258; R.S.1913, § 5048; C.S.1922, § 4217; Laws 1923, c. 188, § 1, p. 432; C.S.1929, § 17-156; Laws 1943, c. 33, § 2, p. 151; R.S.1943, § 17-925.01; Laws 1947, c. 51, § 2, p. 172; Laws 1951, c. 37, § 1, p. 138; Laws 1953, c. 287, § 22, p. 944; Laws 1979, LB 187, § 59; Laws 1992, LB 719A, § 61; Laws 1997, LB 67, § 1; Laws 2017, LB133, § 261.  
Effective date August 24, 2017.

#### **17-925.02 Sewers; rental charges; collection.**

Any city of the second class or village may make rental charges for the use of an established municipal sewerage system on a fair and impartial basis for services rendered. Such rental charges shall be collected at the same time and in the same manner as water charges by the same city or village.

**Source:** Laws 1947, c. 43, § 1, p. 159; Laws 2017, LB133, § 262.  
Effective date August 24, 2017.

#### **17-925.03 Sewers; rental charges; reduction in taxes.**

The revenue from rental charges under section 17-925.02 shall only be used for the abatement or the reduction of ad valorem taxes being levied or to be levied for the payment of bonds outstanding or to be issued for the construction of or additions to the sewerage system described in section 17-925.02.

**Source:** Laws 1947, c. 43, § 2, p. 159; Laws 2017, LB133, § 263.  
Effective date August 24, 2017.

#### **17-925.04 Sewers; rental charges; cumulative to service rate for maintenance and repair.**

The charges permitted by sections 17-925.02 to 17-925.04 shall be in addition to the charges permitted by section 17-925.01 for the maintenance and repair of a sewer system.

**Source:** Laws 1947, c. 43, § 3, p. 159; Laws 2017, LB133, § 264.  
Effective date August 24, 2017.

### (c) CEMETERIES

#### **17-926 Cemetery; acquisition; condemnation; procedure.**

Any city of the second class or village through its mayor and city council or village board of trustees may, by eminent domain, condemn, purchase, hold,

and pay for land not exceeding one hundred sixty acres outside the corporate limits of any city of the second class or village for the purpose of the burial of the dead. The mayor and city council or chairperson and village board of trustees are also empowered and authorized to receive by gift or devise real estate for cemetery purposes. In the event any city of the second class or village through its mayor and city council or chairperson and village board of trustees desires to purchase any cemetery belonging to any corporation, partnership, limited liability company, association, or individual, which cemetery has already been properly surveyed and platted, and is used for cemetery purposes, then the mayor and city council or chairperson and village board of trustees are hereby authorized and empowered to purchase the cemetery. In the event the owner or owners of such cemetery desired to be purchased by any city of the second class or village will not or cannot sell and convey such cemetery to the city or village or in the event the owner or owners of such cemetery cannot agree upon the price to be paid for the cemetery, the mayor and city council or the village board of trustees shall by resolution declare the necessity for the acquisition of such cemetery by exercise of the power of eminent domain. The adoption of the resolution shall be deemed conclusive evidence of such necessity. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

**Source:** Laws 1929, c. 46, § 1, p. 195; C.S.1929, § 17-541; R.S.1943, § 17-926; Laws 1951, c. 101, § 60, p. 474; Laws 1963, c. 70, § 3, p. 273; Laws 1993, LB 121, § 136; Laws 2017, LB133, § 265.  
Effective date August 24, 2017.

**17-933 Cemetery; acquisition; title.**

Where real estate for a cemetery under section 17-926 is acquired by gift or devise, the title shall vest in the city or village upon the conditions imposed by the donor and upon acceptance by the mayor and city council or chairperson and village board of trustees. Where such real estate is acquired by purchase or by virtue of exercise of the right of eminent domain, the title shall vest absolutely in such city or village. Nothing in sections 17-933 to 17-937 shall be construed in any manner to affect cemeteries belonging to any religious organization or society, lodge, or fraternal society.

**Source:** Laws 1929, c. 46, § 8, p. 197; C.S.1929, § 17-548; R.S.1943, § 17-933; Laws 2017, LB133, § 266.  
Effective date August 24, 2017.

**17-934 Cemetery; existing cemetery association; transfer to; conditions.**

In any city of the second class or village in which there exists a duly perfected cemetery association as defined in section 12-501, if the cemetery association proposes to the mayor and city council or to the chairperson and village board of trustees by means of a resolution duly enacted by such cemetery association, signed by its president and attested by its secretary, signifying the willingness of the cemetery association to exercise control and management of any cemetery belonging to such city or village, then the mayor and city council or chairperson and village board of trustees shall submit at the next regular municipal election the question of the management and control over the cemetery under the conveyance made by the proper authorities of such city or village. If a majority of the votes cast at such election are in favor of the transfer of the



management and control of the cemetery belonging to such city or village to the cemetery association, the management and control of such cemetery shall be relinquished forthwith by the proper authorities of such city or village to the cemetery association. If the real estate of the cemetery of such city or village has been acquired by gift or devise, the relinquishment of the management and control to the cemetery association shall be subject to the conditions imposed by the donor; and upon acceptance by the president and secretary of the cemetery association, the conditions shall be binding upon the cemetery association.

**Source:** Laws 1929, c. 46, § 8, p. 198; C.S.1929, § 17-548; R.S.1943, § 17-934; Laws 2014, LB863, § 13; Laws 2017, LB133, § 267.  
Effective date August 24, 2017.

**17-935 Existing cemetery association; transfer; deeds; how executed.**

Subsequent to the relinquishment by the mayor and city council of a city of the second class or the chairperson and village board of trustees of a village to the proper officers of a cemetery association, as provided in section 17-934, the deeds to all burial lots executed by the trustees of such cemetery association, through its president and secretary, shall as a matter of course be signed, sealed, acknowledged, and delivered by the proper officers of such city or village as other real property of such city or village is conveyed, except that the transfer of such burial lots shall not require a vote of a majority of the electors of such city or village to make title to the same valid and legal in the purchaser or purchasers thereof.

**Source:** Laws 1929, c. 46, § 8, p. 198; C.S.1929, § 17-548; R.S.1943, § 17-935; Laws 2017, LB133, § 268.  
Effective date August 24, 2017.

**17-936 Existing cemetery association; transfer of funds.**

In case of the transfer of the management and control of a city cemetery or a village cemetery, as provided in sections 17-934 and 17-935, the cemetery board erected under section 12-401 shall have no jurisdiction over the management and control of such cemetery after the transfer. In the event of such transfer, any funds or any money to the credit of the cemetery fund or any perpetual fund created under section 12-402 shall be paid over by the city treasurer of such city or by the village treasurer of such village to the treasurer of the cemetery association; and all endowments contemplated under section 12-301 to such city cemetery or village cemetery shall vest absolutely in the cemetery association to whom the control and management of such cemetery shall have been transferred.

**Source:** Laws 1929, c. 46, § 8, p. 199; C.S.1929, § 17-548; R.S.1943, § 17-936; Laws 1959, c. 49, § 3, p. 239; Laws 2009, LB500, § 3; Laws 2017, LB133, § 269.  
Effective date August 24, 2017.

**17-937 Existing cemetery association; trustees; oath; bond; vacancy; how filled.**

In the case of the transfer of the management and control of a city cemetery or village cemetery as provided in sections 17-934 and 17-935, each of the trustees of the cemetery association shall qualify by subscribing to an oath in

the office of the city clerk or village clerk, as the case may be, substantially as follows: That he or she will faithfully, impartially, and honestly perform his or her duties as such trustee. Whenever the trustees of any cemetery association organized under sections 17-926 to 17-939 shall receive the gift of any property, real or personal, in trust, for the perpetual care of such cemetery, or anything connected therewith, such trustees shall, upon the enactment of bylaws by the association to that effect, require the treasurer of such association to give a bond to such association in a sum equal to the amount of such trust fund and other personal property, conditioned for the faithful administration of such trust and for the care of such funds and property. Such bonds shall be approved by the mayor of the city or by the chairperson of the village board of trustees and shall remain on file with and in the custody of the city clerk or the village clerk. The premium on the bond of the treasurer shall be paid from available cemetery funds credited to or in the hands of such cemetery association. In the event of a vacancy occurring among the members of the board of trustees of such cemetery association, such vacancy shall be filled in the like manner as the original member of such board of trustees was elected in accordance with the provisions of section 12-501. Each trustee elected to fill such vacancy shall subscribe to the oath as provided in this section. Such appointment to fill such vacancy shall continue until the successor of such trustee shall be duly elected and qualified.

**Source:** Laws 1929, c. 46, § 8, p. 199; C.S.1929, § 17-548; R.S.1943, § 17-937; Laws 2017, LB133, § 270.  
Effective date August 24, 2017.

**17-938 Cemetery; maintenance; tax; forfeiture of lot; resale; reclamation of lot; procedure.**

(1) The mayor and city council or the village board of trustees of a city of the second class or village are hereby empowered to levy a tax not to exceed five and two-tenths cents on each one hundred dollars upon the taxable value of all taxable property in such city or village for any one year for improving, adorning, protecting, and caring for a cemetery as provided in section 17-926.

(2) Except as provided in subsection (3) of this section, all certificates to any lot or lots upon which no interments have been made and which have been sold for burial purposes under the provisions of section 17-941 may be declared forfeited and subject to resale if, for more than three consecutive years, all charges and liens as provided under sections 17-926 to 17-947 or by any of the rules, regulations, or bylaws of the association are not promptly paid by the holders of such certificates. All certificates to any lot or lots sold shall contain a forfeiture clause to the effect that if no interment has been made on the lot or lots and all liens and charges have not been paid as provided in this subsection, by ordinance, or in the bylaws of the association, such certificate and the rights under the same may, at the option of the cemetery board, with the approval of the mayor and city council or of the chairperson and village board of trustees, be declared null and void and the lot or lots shall be subject to resale as in the first instance.

(3) When any lot has been transferred by warranty deed or by a deed conveying a fee simple title, but there has been no burial in any such lot or subdivision thereof and no payment of annual assessments for a period of three years, the cemetery board, with the approval of the mayor and city council or of

the chairperson and village board of trustees, may reclaim the unused portion of such lot or subdivision after notifying the record owner or his or her heirs or assigns, if known, by certified mail and publishing notice of its intention to do so. Such notice shall be published once each week for four weeks in a legal newspaper in or of general circulation throughout the county in which the cemetery is located, shall describe the lot or subdivision proposed to be reclaimed, and shall be addressed to the person in whose name such portion stands of record or, if there is no owner of record, to all persons claiming any interest in such lot or subdivision. If no person appears to claim such lot or subdivision and pay all delinquent assessments with interest within fifteen days after the last date of such publication, the cemetery board may by resolution reclaim such lot or subdivision. Such reclamation shall be complete upon a filing of a verified copy of such resolution, together with proof of publication, in the office of the register of deeds.

**Source:** Laws 1929, c. 46, § 9, p. 200; C.S.1929, § 17-549; R.S.1943, § 17-938; Laws 1953, c. 287, § 23, p. 944; Laws 1955, c. 43, § 1, p. 158; Laws 1971, LB 38, § 1; Laws 1979, LB 249, § 1; Laws 1979, LB 187, § 60; Laws 1980, LB 599, § 7; Laws 1986, LB 808, § 1; Laws 1992, LB 719A, § 62; Laws 2017, LB133, § 271.  
Effective date August 24, 2017.

#### **17-939 Cemetery; acquisition; bonds; interest; approval of electors required.**

The mayor and city council of any city of the second class or the village board of trustees of any village is hereby authorized to issue bonds in a sum not exceeding ten thousand dollars for the purpose of acquiring title by purchase or by virtue of eminent domain to land used for cemetery purposes and that may be acquired for any necessary addition to any existing cemetery. No such bonds shall be issued until the question of issuing the same shall be submitted to the electors of any such city or village at a general election thereof, or at a special election called for the purpose of submitting the proposition of issuing such bonds, and unless at such election a majority of the electors voting on the proposition shall have voted in favor of issuing such bonds. Such bonds shall be payable in not exceeding ten years from date and shall bear interest payable annually or semiannually. Notice of such election shall be given by publication in a legal newspaper in or of general circulation in the city or village for three successive weeks, the final publication to be not more than ten days prior to the date of such election. The election shall be governed by the Election Act.

**Source:** Laws 1929, c. 46, § 10, p. 200; C.S.1929, § 17-550; R.S.1943, § 17-939; Laws 1969, c. 51, § 56, p. 307; Laws 1971, LB 534, § 17; Laws 1996, LB 299, § 14; Laws 2017, LB133, § 272.  
Effective date August 24, 2017.

#### **Cross References**

**Election Act**, see section 32-101.

#### **17-940 Cemetery; improvement.**

The mayor and city council of a city of the second class or village board of trustees may survey, plat, map, grade, fence, ornament, and otherwise improve all burial and cemetery grounds and avenues leading to any cemetery owned by

such city or village. Such city or village may construct walks and protect ornamental trees therein and provide for paying the expenses thereof.

**Source:** Laws 1879, § 69, XXXIII, p. 218; Laws 1881, c. 23, § 8, XXXIII, p. 186; Laws 1885, c. 20, § 1, XXXIII, p. 177; Laws 1887, c. 12, § 1, XXXIII, p. 305; R.S.1913, § 5167; C.S.1922, § 4354; C.S. 1929, § 17-552; R.S.1943, § 17-940; Laws 2017, LB133, § 273. Effective date August 24, 2017.

**17-941 Cemetery; lots; conveyance.**

The mayor and city council of a city of the second class or village board of trustees may convey cemetery lots by certificate signed by the mayor or chairperson of the village board of trustees, and countersigned by the city clerk or village clerk, under the seal of the city or village, specifying that the person to whom the same is issued is the owner of the lot or lots described therein by number as laid down on such map or plat, for the purpose of interment; and such certificate shall vest in the proprietor, his or her heirs and assigns, a right in fee simple to such lot for the sole purpose of interment, under the regulation of the city council or village board of trustees.

**Source:** Laws 1879, § 69, XXXIV, p. 218; Laws 1881, c. 23, § 8, XXXIV, p. 186; Laws 1885, c. 20, § 1, XXXIV, p. 177; Laws 1887, c. 12, § 1, XXXIV, p. 306; R.S.1913, § 5168; C.S.1922, § 4355; C.S.1929, § 17-553; R.S.1943, § 17-941; Laws 1971, LB 32, § 4; Laws 2015, LB241, § 3; Laws 2017, LB133, § 274. Effective date August 24, 2017.

**17-942 Cemetery; lots; ownership and use; regulations.**

The mayor and city council of a city of the second class or village board of trustees may limit the number of cemetery lots which shall be owned by the same person at the same time. The city or village may prescribe rules for enclosing, adorning, and erecting monuments and tombstones on cemetery lots and may prohibit any diversion of the use of such lots and any improper adornment thereof; but no religious test shall be made as to the ownership of lots, the burial therein, or the ornamentation of graves or of such lots.

**Source:** Laws 1879, § 69, XXXV, p. 218; Laws 1881, c. 23, § 8, XXXV, p. 187; Laws 1885, c. 20, § 1, XXXV, p. 178; Laws 1887, c. 12, § 1, XXXV, p. 306; R.S.1913, § 5169; C.S.1922, § 4356; C.S.1929, § 17-554; R.S.1943, § 17-942; Laws 2017, LB133, § 275. Effective date August 24, 2017.

**17-943 Cemetery; protection; rules and regulations.**

The mayor and city council of a city of the second class or village board of trustees may pass rules and ordinances imposing penalties and fines not exceeding one hundred dollars, regulating, protecting, and governing the cemetery, the owners of lots, visitors, and trespassers. The officers of such city or village shall have as full jurisdiction and power in the enforcing of such rules and ordinances as though they related to the municipality itself.

**Source:** Laws 1879, § 69, XXXVI, p. 218; Laws 1881, c. 23, § 8, XXXVI, p. 187; Laws 1885, c. 20, § 1, XXXVI, p. 178; Laws 1887, c. 12, § 1,

XXXVI, p. 306; R.S.1913, § 5170; C.S.1922, § 4357; C.S.1929, § 17-555; R.S.1943, § 17-943; Laws 2017, LB133, § 276.  
Effective date August 24, 2017.

**17-945 Cemetery association; trustees; conveyances.**

Upon the formation of a cemetery association under section 17-944, the lot owners in such cemetery shall elect five of their number as trustees, to whom shall be given the general care, management, and supervision of such cemetery. The mayor of the city of the second class or chairperson of the village board of trustees shall, by virtue of his or her office, be a member of the board of trustees of the cemetery association, and it shall be his or her duty to make, execute, and deliver to purchasers of lots deeds for the lots, when requested by the board of trustees of the cemetery association. Such deeds shall be executed under the corporate seal of such city or village, and countersigned by the city clerk or village clerk, specifying that the person to whom such deed is issued is the owner, for the purposes of interment, of the lot or lots described therein by numbers, as laid down on the map or plat of such cemetery. Such deed shall vest in the proprietor, his or her heirs or assigns, a right in fee simple to such lot for the sole purpose of interment, under the regulations of the board of trustees of the cemetery association.

**Source:** Laws 1887, c. 15, § 2, p. 330; R.S.1913, § 5172; C.S.1922, § 4359; C.S.1929, § 17-557; R.S.1943, § 17-945; Laws 2015, LB241, § 4; Laws 2017, LB133, § 277.  
Effective date August 24, 2017.

**17-946 Cemetery association; powers of board of trustees; income; use.**

(1) The board of trustees of a cemetery association formed pursuant to section 17-944 shall have power:

- (a) To limit the number of cemetery lots that shall be owned by the same person at the same time;
- (b) To prescribe rules for enclosing, adorning, and erecting monuments and tombstones on cemetery lots;
- (c) To prohibit any diversions of the use of such lots, and any improper adornment thereof, but no religious tests shall be made as to the ownership of lots, the burial therein, or the ornamentation of graves or of such lots; and
- (d) To pass rules and ordinances imposing penalties and fines, not exceeding one hundred dollars, regulating, governing, and protecting the cemetery, the owners of lots, visitors, and trespassers.

(2) The officers of a city of the second class or village in which a cemetery association has been formed pursuant to section 17-944 shall have as full jurisdiction and power in the enforcing of rules and ordinances passed pursuant to subsection (1) of this section as though such rules and ordinances related to such city or village itself.

(3) All money received from sale of lots in any such cemetery, or which may come to it by donation, bequest, or otherwise, shall be devoted exclusively to the care, management, adornment, and government of such cemetery itself and shall be expended exclusively for such purposes under the direction of the association's board of trustees, except that in addition, and notwithstanding any provision of Chapter 12, article 5, the principal of the fund that is attributable

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

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

**Source:** Laws 1887, c. 15, §§ 3, 4, 5, p. 331; R.S.1913, §§ 5173, 5174, 5175; C.S.1922, §§ 4360, 4361, 4362; C.S.1929, §§ 17-558, 17-559, 17-560; R.S.1943, § 17-946; Laws 2005, LB 262, § 3; Laws 2017, LB133, § 278.  
Effective date August 24, 2017.

**17-947 Cemetery association; formation; funds; transfer to.**

Upon the organization of a cemetery association as provided in section 17-944, all property and money under the control of the city council or village board of trustees shall vest in such cemetery association for the purposes provided for in sections 17-926 to 17-947, and all money in the control of such city council or village board of trustees shall be turned over to the board of trustees of such cemetery association.

**Source:** Laws 1887, c. 15, § 6, p. 332; R.S.1913, § 5176; C.S.1922, § 4363; C.S.1929, § 17-561; R.S.1943, § 17-947; Laws 2017, LB133, § 279.  
Effective date August 24, 2017.

(d) RECREATION CENTERS

**17-948 Recreation and conservation; real estate; acquisition by gift or purchase; title.**

Cities of the second class and villages are empowered and authorized to receive, by gift or devise, and to purchase real estate within or without their corporate limits, for the purpose of parks, public grounds, swimming pools, or dams, either for recreational or conservational purposes. If such real estate is acquired by gift or devise, the title shall be vested in the city or village, upon the conditions imposed by the donor and upon the acceptance by the mayor and city council or the village board of trustees; and if such real estate is acquired by purchase, the title shall vest absolutely in such city or village.

**Source:** Laws 1937, c. 35, § 1, p. 162; C.S.Supp.,1941, § 17-590; R.S. 1943, § 17-948; Laws 1969, c. 86, § 3, p. 432; Laws 2017, LB133, § 280.  
Effective date August 24, 2017.

**17-949 Recreation and conservation; real estate; regulation and control; penalties authorized.**

Whether the title to real estate under section 17-948 shall be acquired by gift, devise, or purchase, the jurisdiction of the city council, park board, or the village board of trustees shall at once be extended over such real estate; and the

city council, park board, or village board of trustees shall have power to enact bylaws, rules, or ordinances for the protection and preservation of any real estate acquired, and to provide rules and regulations for the closing of such park or swimming pool, in whole or in part, to the general public, and charge admission thereto during such closing, either by the municipality or by any person, persons, or corporation leasing the same. The city or village may provide suitable penalties for the violation of such bylaws, rules, or ordinances, and the police power of any such city or village shall be at once extended over the same.

**Source:** Laws 1937, c. 35, § 2, p. 162; C.S.Supp.,1941, § 17-591; R.S. 1943, § 17-949; Laws 1961, c. 52, § 1, p. 195; Laws 2017, LB133, § 281.

Effective date August 24, 2017.

**17-950 Recreation and conservation; real estate; acquisition; purposes; bonds; interest; approval of electors required.**

The mayor and city council of any city of the second class or the village board of trustees of any village are hereby authorized to issue bonds for the purpose of acquiring title to real estate, as contemplated by sections 17-948 and 17-949, and for the purpose of improving, equipping, and furnishing such real estate as parks and recreational grounds and for the purpose of building swimming pools and dams. No such bonds shall be issued until the question of issuing the same shall have been submitted to the electors of such city or village at a general election therein, or at a special election called for the purpose of submitting a proposition to issue such bonds, and unless at such election a majority of the electors voting on such proposition shall have voted in favor of issuing such bonds. The question of bond issues in such cities and villages, when defeated, shall not be resubmitted in substance for a period of six months from and after the date of such election. Such bonds shall be payable in not exceeding twenty years from their date and shall bear interest payable annually or semiannually.

**Source:** Laws 1937, c. 35, § 3, p. 163; C.S.Supp.,1941, § 17-592; R.S. 1943, § 17-950; Laws 1955, c. 44, § 1, p. 159; Laws 1965, c. 71, § 1, p. 292; Laws 1969, c. 51, § 57, p. 308; Laws 1971, LB 534, § 18; Laws 1979, LB 187, § 61; Laws 1982, LB 692, § 2; Laws 2017, LB133, § 282.

Effective date August 24, 2017.

**17-951 Facilities; maintenance and improvement; tax authorized.**

The mayor and city council of any city of the second class or the village board of trustees of any village which has already acquired or hereafter acquires land for park purposes or recreational facilities or which has already built or hereafter builds swimming pools, recreational facilities, or dams may each year make and levy a tax upon the taxable value of all the taxable property in such city or village. The levy shall be collected and put into the city or village treasury and shall constitute the park and recreation fund of such city or village. The funds so levied and collected shall be used for amusements, for laying out, improving, and beautifying such parks, for maintaining, improving, managing, and beautifying such swimming pools, recreational facilities, or

dams, and for the payment of salaries and wages of persons employed in the performance of such labor.

**Source:** Laws 1937, c. 35, § 4, p. 163; C.S.Supp.,1941, § 17-593; R.S. 1943, § 17-951; Laws 1953, c. 36, § 1, p. 127; Laws 1969, c. 86, § 4, p. 432; Laws 1979, LB 187, § 62; Laws 1992, LB 719A, § 63; Laws 2017, LB133, § 283.  
Effective date August 24, 2017.

**17-952 Board of commissioners; members; duties.**

In each city of the second class or village, where land for park purposes or recreational facilities is acquired, or swimming pools, recreational facilities, or dams may be built, the mayor and city council of the city or the village board of trustees may provide by ordinance for the creation of a board of park commissioners, or board of park and recreation commissioners, which, in either case, shall be composed of not less than three members, who shall be residents of the city or village, and who shall have charge of all parks and recreational facilities belonging to the city or village, and shall have the power to establish rules for the management, care, and use of the same. Where such board of park commissioners or board of park and recreation commissioners has been appointed and qualified, all accounts against the park fund or park and recreation fund shall be audited by such board, and warrants against the fund shall be drawn by the chairperson of such board, and warrants so drawn shall be paid by the city treasurer or village treasurer out of such fund.

**Source:** Laws 1937, c. 35, § 5, p. 163; C.S.Supp.,1941, § 17-594; R.S. 1943, § 17-952; Laws 1969, c. 86, § 5, p. 432; Laws 2005, LB 626, § 4; Laws 2017, LB133, § 284.  
Effective date August 24, 2017.

(e) PUBLIC BUILDINGS

**17-953 Public buildings; acquisition or construction; approval of electors required; exception.**

Cities of the second class and villages are hereby authorized and empowered to (1) purchase, (2) accept by gift or devise, (3) purchase real estate upon which to erect, and (4) erect a building or buildings for an auditorium, fire station, municipal building, or community house for housing municipal enterprises and social and recreation purposes, and other public buildings, including the construction of buildings authorized to be constructed by Chapter 72, article 14, and including construction of buildings to be leased in whole or in part by the city or village to any other political or governmental subdivision of the State of Nebraska authorized by law to lease such buildings, and maintain, manage, and operate the same for the benefit of the inhabitants of such cities or villages. Except as provided in section 17-953.01, before any such purchase can be made or building erected, the question shall be submitted to the electors of such city or village at a general municipal election or at an election duly called for that purpose, or as set forth in section 17-954, and be adopted by a majority of the electors voting on such question.

**Source:** Laws 1935, c. 37, § 1, p. 151; C.S.Supp.,1941, § 17-167; R.S. 1943, § 17-953; Laws 1947, c. 40, § 1, p. 153; Laws 1955, c. 45,



§ 2, p. 162; Laws 1969, c. 97, § 1, p. 465; Laws 1981, LB 220, § 1; Laws 2017, LB133, § 285.  
Effective date August 24, 2017.

**17-953.01 Purchase or construction of public buildings without bond issue; remonstrance petition; procedure.**

If the funds to be used to finance the purchase or construction of a building under section 17-953 are available other than through a bond issue, then either:

(1) Notice of the proposed purchase or construction shall be published in a legal newspaper in or of general circulation in the city or village and no election shall be required to approve the purchase or construction unless within thirty days after the publication of the notice a remonstrance petition against the purchase or construction is signed by registered voters of the city or village equal in number to fifteen percent of the registered voters of the city or village voting at the last regular municipal election held therein and is filed with the governing body of the city or village. If the date for filing the petition falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the thirty-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day. If a petition with the necessary number of qualified signatures is timely filed, the question shall be submitted to the voters of the city or village at a general municipal election or a special election duly called for that purpose. If the purchase or construction is not approved, the property involved shall not then, nor within one year following the election, be purchased or constructed; or

(2) The governing body may proceed without providing the notice and right of petition required in subdivision (1) of this section if the property can be purchased below the fair market value as determined by an appraisal, and there is a willing seller, and the purchase price is less than twenty-five thousand dollars. Such purchase shall be approved by the governing body after notice and public hearing as provided in section 18-1755.

**Source:** Laws 1981, LB 220, § 2; Laws 1993, LB 59, § 3; Laws 1995, LB 197, § 2; Laws 2017, LB133, § 286.  
Effective date August 24, 2017.

**17-954 Public buildings; purchase or construction; bonds; approval of electors required; exception.**

The mayor and city council of a city of the second class or the chairperson and village board of trustees adopting the proposition to make a purchase or erect a building or buildings for the purposes set forth in section 17-953 shall have the power to borrow money and pledge the property and credit of the city or village upon its negotiable bonds. No such bonds shall be issued until after the same have been authorized by a majority vote of the electors voting on the proposition of their issuance, at a general municipal election or at a special election called for the submission of such proposition. The question of such purchase or erection of such a building or buildings, as set forth in section 17-953, and the question of the issuance of the negotiable bonds referred to in this section may be submitted as one question at a general municipal or special election if so ordered by resolution or ordinance. Notice of the time and place of such election shall be given by publication in a legal newspaper in or of general circulation in such city or village three successive weeks immediately

prior thereto. No such election for the issuance of such bonds shall be called until a petition for the election signed by at least ten percent of the legal voters of such city or village has been presented to the city council or to the village board of trustees. The number of voters voting at the last regular municipal election prior to the presenting of such petition shall be deemed the number of votes in such city or village for the purpose of determining the sufficiency of such petition. The question of bond issues for such purpose in such cities or villages when defeated shall not be resubmitted for six months from and after the date of such election. When the building to be constructed is to be used by the State of Nebraska or its agency or agencies under a lease authorized by Chapter 72, article 14, or the building is to be leased by any other political or governmental subdivision of the State of Nebraska, when the combined area of the building to be leased by the state or its agency or agencies and the political or governmental subdivision of the State of Nebraska is more than fifty percent of the area of the building, and when such sum does not exceed two million dollars, then no such vote of the electors will be required.

**Source:** Laws 1935, c. 37, § 2, p. 151; C.S.Supp.,1941, § 17-168; R.S. 1943, § 17-954; Laws 1947, c. 40, § 2, p. 154; Laws 1969, c. 97, § 2, p. 466; Laws 2017, LB133, § 287.  
Effective date August 24, 2017.

#### **17-955 Public buildings; maintenance; tax.**

The mayor and city council of cities of the second class and chairperson and village board of trustees of villages shall have the power to levy an annual tax not to exceed seven cents on each one hundred dollars upon the taxable value of the taxable property in such cities or villages for the purpose of maintaining an auditorium, municipal building, or community house and shall, by ordinance, determine and declare how such auditorium, municipal building, or community house shall be managed.

**Source:** Laws 1935, c. 37, § 3, p. 152; C.S.Supp.,1941, § 17-169; R.S. 1943, § 17-955; Laws 1947, c. 40, § 3, p. 155; Laws 1953, c. 287, § 24, p. 930; Laws 1957, c. 35, § 1, p. 199; Laws 1979, LB 187, § 63; Laws 1992, LB 1063, § 9; Laws 1992, Second Spec. Sess., LB 1, § 9; Laws 2017, LB133, § 288.  
Effective date August 24, 2017.

#### (f) REFRIGERATION

#### **17-957 Cold storage plants; construction; cost; tax; bonds.**

The cost of cold storage or refrigeration plants under section 17-956 may be defrayed by the levy of a tax of not to exceed three and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property within the corporate limits of such city or village in any one year or, when such tax is insufficient for the purpose, by the issuance of bonds of the municipality.

**Source:** Laws 1941, c. 24, § 2, p. 118; C.S.Supp.,1941, § 17-802; R.S. 1943, § 17-957; Laws 1953, c. 287, § 25, p. 945; Laws 1979, LB 187, § 64; Laws 1992, LB 1063, § 10; Laws 1992, Second Spec. Sess., LB 1, § 10; Laws 2017, LB133, § 289.  
Effective date August 24, 2017.

**17-958 Cold storage plants; bonds; approval of electors; interest; redemption.**

The question of issuing bonds for any purpose contemplated by sections 17-956 to 17-960 shall be submitted to the electors at any election held for that purpose after not less than thirty days' notice has been given by publication in a legal newspaper in or of general circulation in such municipality. Such bonds may be issued only when a majority of the electors voting on the question favor their issuance. Such bonds shall bear interest, payable annually or semiannually, and shall be payable any time the municipality may determine at the time of their issuance but in not more than twenty years after their issuance. The aggregate amount of bonds that may be issued for the construction or purchase of a cold storage or refrigeration plant shall not exceed five percent of the taxable valuation of all the property in such city or village subject to taxation.

**Source:** Laws 1941, c. 24, § 3, p. 118; C.S.Supp.,1941, § 17-803; R.S. 1943, § 17-958; Laws 1969, c. 51, § 58, p. 308; Laws 1971, LB 534, § 19; Laws 1986, LB 960, § 9; Laws 1992, LB 719A, § 64; Laws 2017, LB133, § 290.  
Effective date August 24, 2017.

**17-959 Cold storage plants; operation and extension; tax.**

The city council or village board of trustees shall levy annually a sufficient tax to maintain, operate, and extend any cold storage or refrigeration plant as provided under section 17-956 and to provide for the payment of the interest on, and principal of, any bonds that may have been issued as provided in section 17-957.

**Source:** Laws 1941, c. 24, § 3, p. 119; C.S.Supp.,1941, § 17-803; R.S. 1943, § 17-959; Laws 2017, LB133, § 291.  
Effective date August 24, 2017.

**17-960 Cold storage plants; management; rates.**

When any cold storage or refrigeration plant shall have been established under section 17-956, the municipality shall provide by ordinance for the management thereof and the rates to be charged and the manner of payment for such cold storage or refrigeration plant service to be furnished. In municipalities maintaining a system of waterworks and having a water commissioner, he or she shall have charge of the cold storage or refrigeration plant unless the local governing body shall otherwise provide by the ordinance which shall establish rules and regulations to govern and control such utility.

**Source:** Laws 1941, c. 24, § 4, p. 119; C.S.Supp.,1941, § 17-804; R.S. 1943, § 17-960; Laws 2017, LB133, § 292.  
Effective date August 24, 2017.

## (g) MEDICAL AND HOUSING FACILITIES

**17-962 Gift or devise; approval by city council or village board of trustees.**

Before any gift or devise specified in section 17-961 may be accepted, such gift or devise shall be approved by the city council or village board of trustees.

**Source:** Laws 1945, c. 31, § 2, p. 149; Laws 1992, LB 1240, § 15; Laws 2017, LB133, § 293.  
Effective date August 24, 2017.

**17-963 Facility; acquisition or construction; issuance of bonds; interest; election.**

(1) The mayor and city council of a city of the second class or the chairperson and village board of trustees of a village adopting the proposition to accept a gift or devise, make such purchase, erect such building or buildings, or maintain, manage, improve, remodel, equip, and operate a facility under section 17-961 shall have the power to borrow money and pledge the property and credit of the city or village upon its municipal bonds, or otherwise, for such purpose or purposes, except that no such bonds shall be issued until after the same have been authorized by a majority vote of the electors voting on the proposition of their issuance at a general municipal election or at a special election called for the submission of such proposition.

(2) The bonds shall be payable in not to exceed twenty years from date and shall bear interest payable annually or semiannually. Notice of the time and place of the election shall be given by publication three successive weeks prior to such election in a legal newspaper in or of general circulation in such city or village.

(3) No election shall be called until a petition for the election, signed by at least ten percent of the legal voters of such city or village, has been presented to the city council or to the village board of trustees. The number of voters of the city or village voting for the office of Governor at the last general election prior to the presenting of such petition shall be deemed the number of voters in the city or village for the purpose of determining the sufficiency of such a petition. If such a bond issue in such a city or village is defeated, the proposition of issuing bonds for such a purpose shall not be resubmitted to the voters therein within a period of six months from and after the date of such election.

**Source:** Laws 1945, c. 31, § 3, p. 149; Laws 1947, c. 41, § 1, p. 156; Laws 1957, c. 36, § 2, p. 201; Laws 1965, c. 72, § 2, p. 293; Laws 1969, c. 51, § 59, p. 309; Laws 1971, LB 534, § 20; Laws 1992, LB 1240, § 16; Laws 2017, LB133, § 294.  
Effective date August 24, 2017.

**17-964 Facility; maintenance; tax.**

The mayor and city council of cities of the second class and the chairperson and village board of trustees of villages shall have the power to levy a tax each year of not to exceed seven cents on each one hundred dollars upon the taxable value of all the taxable property in such cities or villages for the purpose of maintaining and operating a facility as provided in sections 17-961 to 17-966. The city council or village board of trustees shall by ordinance determine and declare how the facility shall be managed.

**Source:** Laws 1945, c. 31, § 4, p. 150; Laws 1953, c. 287, § 26, p. 946; Laws 1957, c. 36, § 3, p. 202; Laws 1965, c. 72, § 3, p. 294; Laws 1979, LB 187, § 65; Laws 1992, LB 719A, § 65; Laws 1992, LB 1240, § 17; Laws 2017, LB133, § 295.  
Effective date August 24, 2017.

**17-965 Facility fund; established; custodian.**

Whenever a city or village acquires a facility as provided in sections 17-961 to 17-966, there shall be established a facility fund of which the city treasurer or

village treasurer shall be the custodian. All funds received by gift or devise or raised by taxation, as provided in such sections, shall be paid into such fund.

**Source:** Laws 1945, c. 31, § 5, p. 150; Laws 1957, c. 36, § 4, p. 202; Laws 1965, c. 72, § 4, p. 295; Laws 1992, LB 1240, § 18; Laws 2017, LB133, § 296.

Effective date August 24, 2017.

**17-966 Facility board; members; duties; powers; warrants.**

In each city or village where a facility as provided in sections 17-961 to 17-966 is established, the mayor and city council of such city or the chairperson and village board of trustees of such village may provide by ordinance for the creation of a facility board which shall be composed of not less than three nor more than seven members. The members of the facility board shall (1) be residents of such city or village, (2) have charge of the facility, and (3) have the power to establish rules for the management, operation, and use of the facility, as provided by such ordinance. When a facility board has been appointed and qualified, all accounts against the facility fund shall be audited by the facility board, warrants against such fund shall be drawn by the chairperson of such board, and warrants so drawn shall be paid by the city treasurer or village treasurer out of such fund.

**Source:** Laws 1945, c. 31, § 6, p. 150; Laws 1957, c. 36, § 5, p. 202; Laws 1965, c. 72, § 5, p. 295; Laws 1992, LB 1240, § 19; Laws 2003, LB 76, § 1; Laws 2017, LB133, § 297.

Effective date August 24, 2017.

(h) LIBRARIES

**17-967 Bonds; city of the second class or village; municipal library; issuance; interest; conditions; limitations; tax levy.**

Any city of the second class or village is hereby authorized to issue bonds in aid of improving municipal libraries of cities of the second class and villages in an amount not exceeding seven-tenths of one percent of the taxable valuation of all the taxable property, as shown by the last assessment, within such city of the second class or village in the manner directed in this section:

(1) A petition signed by not less than fifty property owners of the city of the second class or village shall be presented to the city council or village board of trustees. Such petition shall set forth the nature of the work contemplated, the amount of bonds sought to be voted, the rate of interest, and the length of time such bonds run, which in no event shall be less than five years nor more than twenty years from the date of such petition. The petitioners shall give bond to be approved by the city council or village board of trustees for the payment of the expenses of the election in the event that the proposition fails to receive a majority of the votes cast at such election; and

(2) Upon the receipt of such petition, the city council or village board of trustees shall give notice and call an election in the city of the second class or village. Such notice, call, and election shall be governed by the Election Act. When a proposition is submitted for the issuance of bonds for the acquisition of a site or the construction of a single building for the purpose of housing the municipal public library in cities of the second class or villages, it shall be required as a condition precedent to the issuance of such bonds that a majority

of the votes cast shall be in favor of such proposition. Bonds in such city or village shall not be issued for such purpose in the aggregate to exceed one and four-tenths percent of the taxable valuation of all the taxable property in such a city or village as shown by the last assessment within such city or village.

**Source:** Laws 1967, c. 33, § 3, p. 154; Laws 1969, c. 51, § 60, p. 310; Laws 1971, LB 534, § 21; Laws 1979, LB 187, § 66; Laws 1992, LB 719A, § 66; Laws 2017, LB133, § 298.  
Effective date August 24, 2017.

Cross References

Election Act, see section 32-101.

**17-968 Bonds; issuance; record.**

If a majority of the votes cast at an election called under section 17-967 are in favor of the proposition, the city council or village board of trustees shall cause to be prepared and shall issue the bonds in accordance with the petition and notice of election. The bonds shall be signed by the mayor and city clerk or chairperson of the village board of trustees and village clerk and shall be attested by the respective seals. The city clerk or village clerk shall enter upon the records of the city council or village board of trustees, the petition, bond, notice, and call for the election, canvass of the vote, the number, amount, and interest, and the date at which each bond issued shall become payable.

**Source:** Laws 1967, c. 33, § 4, p. 156; Laws 1971, LB 534, § 22; Laws 2001, LB 420, § 18; Laws 2017, LB133, § 299.  
Effective date August 24, 2017.

**17-969 Bonds; sinking fund; interest; levy.**

The city council or village board of trustees shall each year until the bonds issued under the authority of section 17-967 be paid, levy upon the taxable property in the city of the second class or village, a tax sufficient to pay the interest and five percent of the principal as a sinking fund; and at the tax levy preceding the maturity of any such bonds, levy an amount sufficient to pay the principal and interest due on such bonds.

**Source:** Laws 1967, c. 33, § 5, p. 156; Laws 2017, LB133, § 300.  
Effective date August 24, 2017.

(i) WATER SERVICE DISTRICT

**17-970 Water service districts; establishment; ordinance.**

The governing body of any city of the second class or village shall have power, by ordinance, (1) to lay out the city or village into suitable districts for the purpose of establishing a system of water service districts, (2) to provide water service systems and regulate the construction, repair, and use of the water service systems, (3) to compel all proper connections with the water service system and branches from other streets, avenues, and alleys, and from private property, and (4) to provide a penalty not to exceed one hundred dollars for any obstruction or injury to any water main or part thereof, or for failure to comply with the regulations prescribed therefor. No such improvements shall be ordered except as provided in sections 17-971 and 17-972.

**Source:** Laws 1967, c. 73, § 1, p. 237; Laws 2017, LB133, § 301.  
Effective date August 24, 2017.

**17-971 Water service districts; improvements; protest; effect; special assessments.**

If a governing body deems it necessary or desirable to make improvements in a water service district, it shall by ordinance create such water service district and, after the passage, approval, and publication of such ordinance, shall publish notice of the creation of such district for two consecutive weeks in a legal newspaper in or of general circulation in the city or village. If a majority of the resident owners of the property directly abutting upon any water main to be constructed within such water service district shall file with the city clerk or the village clerk within twenty days after the first publication of such notice written objections to the creation of such district, such improvement shall not be made as provided in such ordinance, but such ordinance shall be repealed. If such objections are not so filed against the district, the governing body shall immediately cause such work to be done or such improvement to be made, shall contract for the work or improvement, and shall levy special assessments on the lots and parcels of land within such district or districts specially benefited in proportion to such benefits in order to pay the cost of such improvement.

**Source:** Laws 1967, c. 73, § 2, p. 237; Laws 1986, LB 960, § 10; Laws 2015, LB361, § 38; Laws 2017, LB133, § 302.  
Effective date August 24, 2017.

**17-973 Water service district; assessments; lien; date due; payable.**

All assessments made under the provisions of sections 17-970 to 17-976 shall be a lien on the property against which levied from the date of levy and shall thereupon be certified by direction of the governing body to the city treasurer or village treasurer for collection. Except as provided in section 18-1216, such assessments shall be due and payable to such treasurer until November 1 thereafter or until the delivery of the tax list for such year to the treasurer of the county in which such city or village may be situated, at and after which time the same shall be due and payable to such county treasurer. The governing body of such city or village shall, within the time provided by law, cause such assessments, or the portion thereof remaining unpaid, to be certified to the county clerk for entry upon the proper tax lists. If the city treasurer or village treasurer collects any assessment or portion thereof so certified while the same shall be payable to the county treasurer, the city treasurer or village treasurer shall certify the assessment or portion thereof to the county treasurer at once, and the county treasurer shall correct the record to show such payment.

**Source:** Laws 1967, c. 73, § 4, p. 238; Laws 1996, LB 962, § 2; Laws 2017, LB133, § 303.  
Effective date August 24, 2017.

**17-974 Water service district; assessments; delinquent; interest; rate; payment.**

Assessments under section 17-973 shall become delinquent in equal annual installments over such period of years, not to exceed ten, as the governing body may determine at the time of making the levy, the first such equal installment to become delinquent in fifty days after the date of such levy. Each of such installments, except the first, shall draw interest at a rate not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be

adjusted by the Legislature, payable annually, from the time of the levy until the same shall become delinquent, and after the same becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon. All of such installments may be paid at one time on any lot or land within fifty days from the date of the levy without interest and, if so paid, such lot or land shall be exempt from any lien or charge for such installments.

**Source:** Laws 1967, c. 73, § 5, p. 239; Laws 1980, LB 933, § 21; Laws 1981, LB 167, § 22; Laws 2017, LB133, § 304.  
Effective date August 24, 2017.

**17-976 Water service districts; cost of improvements; bonds; interest; issuance; tax; levy.**

For the purpose of paying the cost of improvements in any water service district and the funding of any warrants issued, the governing body may by ordinance cause to be issued bonds of the city or village to be called Water Service District Bonds of District No. . . ., payable in not to exceed ten years from date and to bear interest payable annually or semiannually. Such bonds shall be general obligations of the city or village, and the governing body shall levy and collect annually a tax upon all of the taxable property in such city or village sufficient in rate and amount to pay in full, when taken together with the assessments provided for in section 17-971, the principal and interest of such bonds as the same become due. The amount of such tax shall not be included in the maximum amount of tax which any such city of the second class or village is authorized to levy annually.

**Source:** Laws 1967, c. 73, § 7, p. 239; Laws 1969, c. 51, § 61, p. 311; Laws 1992, LB 719A, § 67; Laws 2017, LB133, § 305.  
Effective date August 24, 2017.

## ARTICLE 10

### SUBURBAN DEVELOPMENT

Section

- 17-1001. Suburban development; zoning ordinances; building regulations; public utility codes; extension; notice to county board.
- 17-1002. Designation of jurisdiction; suburban development; subdivision; platting; consent required; review; when required.
- 17-1003. Suburban development; powers of city council or village board of trustees; dedication of avenues, streets, and alleys.

**17-1001 Suburban development; zoning ordinances; building regulations; public utility codes; extension; notice to county board.**

(1) Except as provided in section 13-327 and subsection (2) of this section, the extraterritorial zoning jurisdiction of a city of the second class or village shall consist of the unincorporated area one mile beyond and adjacent to its corporate boundaries.

(2) For purposes of sections 70-1001 to 70-1020, the extraterritorial zoning jurisdiction of a city of the second class or village shall consist of the unincorporated area one-half mile beyond and adjacent to its corporate boundaries.

(3) Any city of the second class or village may apply by ordinance any existing or future zoning regulations, property use regulations, building ordinances,



electrical ordinances, and plumbing ordinances within its extraterritorial zoning jurisdiction, with the same force and effect as if such area was within its corporate limits. No such ordinance shall be extended or applied so as to prohibit, prevent, or interfere with the conduct of existing farming, livestock operations, businesses, or industry. The fact that the extraterritorial zoning jurisdiction or part thereof is located in a different county or counties than some or all portions of the municipality shall not be construed as affecting the powers of the city or village to apply such ordinances.

(4)(a) A city of the second class or village shall provide written notice to the county board of the county in which the extraterritorial zoning jurisdiction of the city or village is located when proposing to adopt or amend a zoning ordinance which affects the extraterritorial zoning jurisdiction of the city or village within such county. The written notice of the proposed change to the zoning ordinance shall be sent to the county board or its designee at least thirty days prior to the final decision by the city or village. The county board may submit comments or recommendations regarding the change in the zoning ordinance at the public hearings on the proposed change or directly to the city or village within thirty days after receiving such notice. The city or village may make its final decision (i) upon the expiration of the thirty days following the notice or (ii) when the county board submits comments or recommendations, if any, to the city or village prior to the expiration of the thirty days following the notice.

(b) Subdivision (4)(a) of this section does not apply to a city of the second class or a village (i) located in a county with a population in excess of one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census or (ii) if the city or village and the county have a joint planning commission or joint planning department.

**Source:** Laws 1957, c. 37, § 1, p. 204; Laws 1967, c. 70, § 3, p. 232; Laws 1967, c. 75, § 4, p. 244; Laws 1983, LB 71, § 4; Laws 2002, LB 729, § 10; Laws 2016, LB295, § 2; Laws 2017, LB113, § 20; Laws 2017, LB133, § 306.  
Effective date August 24, 2017.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB113, section 20, with LB133, section 306, to reflect all amendments.

**17-1002 Designation of jurisdiction; suburban development; subdivision; platting; consent required; review; when required.**

(1) Except as provided in subsection (5) of this section, any city of the second class or village may designate by ordinance the portion of the territory located within its extraterritorial zoning jurisdiction outside of any other organized city or village within which the designating city or village will exercise the powers and duties granted by this section and section 17-1003 or section 19-2402.

(2) No owner of any real property located within the area designated by a city or village pursuant to subsection (1) or (5) of this section may subdivide, plat, or lay out such real property in building lots, streets, or other portions of the same intended to be dedicated for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto without first having obtained the approval of the city council or village board of trustees or its agent designated pursuant to section 19-916 and, when applicable, having complied with sections 39-1311 to 39-1311.05. The fact that such real property is located

in a different county or counties than some or all portions of the municipality shall not be construed as affecting the necessity of obtaining the approval of the city council or village board of trustees or its designated agent.

(3) No plat of such real property shall be recorded or have any force or effect unless approved by the city council or village board of trustees or its designated agent.

(4) Except as provided in subsection (6) of this section, in counties that have adopted a comprehensive development plan which meets the requirements of section 23-114.02 and are enforcing subdivision regulations, the county planning commission shall be provided with all available materials on any proposed subdivision plat, contemplating public streets or improvements, which is filed with a city of the second class or village in that county, when such proposed plat lies partially or totally within the portion of the extraterritorial zoning jurisdiction of that city or village where the powers and duties granted by this section and section 17-1003 or section 19-2402 are being exercised by that municipality in such county. The commission shall be given four weeks to officially comment on the appropriateness of the design and improvements proposed in the plat. The review period for the commission shall run concurrently with subdivision review activities of the municipality after the commission receives all available material for a proposed subdivision plat.

(5) If a city of the second class or village receives approval for the cession and transfer of additional extraterritorial zoning jurisdiction under section 13-327, such city or village may designate by ordinance the portion of the territory located within its extraterritorial zoning jurisdiction and outside of any other organized city or village within which the designating city or village will exercise the powers and duties granted by this section and section 17-1003 or section 19-2402 and shall include territory ceded under section 13-327 within such designation.

(6) In counties having a population in excess of one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census but less than two hundred fifty thousand inhabitants that have adopted a comprehensive development plan which meets the requirements of section 23-114.02 and are enforcing subdivision regulations, the county planning department and public works department shall be provided with all available materials on any proposed subdivision plat, contemplating public streets or improvements, which is filed with a city of the second class or village in that county, when such proposed plat lies partially or totally within the extraterritorial zoning jurisdiction being exercised by that city of the second class or village in such county. The county may officially comment on the appropriateness of the design and improvements proposed in the plat.

**Source:** Laws 1957, c. 37, § 2, p. 204; Laws 1967, c. 70, § 4, p. 233; Laws 1967, c. 75, § 5, p. 244; Laws 1978, LB 186, § 2; Laws 1983, LB 71, § 5; Laws 1993, LB 208, § 3; Laws 2001, LB 222, § 2; Laws 2002, LB 729, § 11; Laws 2003, LB 187, § 5; Laws 2016, LB864, § 3; Laws 2016, LB877, § 1; Laws 2017, LB74, § 3; Laws 2017, LB133, § 307.

Effective date August 24, 2017.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB74, section 3, with LB133, section 307, to reflect all amendments.

**17-1003 Suburban development; powers of city council or village board of trustees; dedication of avenues, streets, and alleys.**

The city council of a city of the second class or village board of trustees shall have power, by ordinance, to provide the manner, plan, or method by which the real property within the extraterritorial zoning jurisdiction of the city or village may be subdivided, platted, or laid out, including a plan or system for the avenues, streets, or alleys to be laid out within or across the same. The city council or village board of trustees shall have the power to compel the owner of any such real property, in subdividing, platting, or laying out of same, to conform to the requirements of such ordinance and to lay out and dedicate the avenues, streets, and alleys in accordance therewith.

**Source:** Laws 1957, c. 37, § 3, p. 204; Laws 2017, LB133, § 308.  
Effective date August 24, 2017.



## CHAPTER 18

### CITIES AND VILLAGES; LAWS APPLICABLE TO ALL

Article.

- 6. Subways and Viaducts. 18-601, 18-613.
- 17. Miscellaneous. 18-1753.
- 21. Community Development. 18-2102.01.
- 27. Municipal Economic Development. 18-2709 to 18-2715.
- 29. Urban Growth Districts. 18-2901.
- 30. Planned Unit Development. 18-3001.
- 32. Property Assessed Clean Energy Act. Transferred.
- 33. Annexation. 18-3301 to 18-3315.

#### ARTICLE 6

#### SUBWAYS AND VIADUCTS

Section

- 18-601. Construction; federal aid; plans; assumption of liability; condemnation procedure.
- 18-613. Department of Transportation; construction contracts authorized.

#### **18-601 Construction; federal aid; plans; assumption of liability; condemnation procedure.**

Any city or village shall have power by ordinance to avail itself of federal funds for the construction within the city or village limits of subways, viaducts, and approaches thereto, over or under railroad tracks, and may authorize agreements with the Department of Transportation to construct such viaducts or subways, which shall be paid for out of funds furnished by the federal government. The ordinance shall approve detailed plans and specifications for such construction, including a map showing the exact location that such viaduct or subway is to occupy, which shall then and thereafter be kept on file with the city or village clerk and be open to public inspection. The ordinance shall make provision for the assumption of liability and payment of consequential damages to property owners resulting from such proposed construction and payment of damages for property taken therefor. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

**Source:** Laws 1935, Spec. Sess., c. 34, § 1, p. 196; C.S.Supp.,1941, § 18-901; R.S.1943, § 18-601; Laws 1947, c. 47, § 1, p. 166; Laws 1951, c. 101, § 61, p. 475; Laws 2017, LB339, § 79.  
Operative date July 1, 2017.

#### **18-613 Department of Transportation; construction contracts authorized.**

The Department of Transportation shall be authorized to enter into contracts for the construction of such viaduct or subway, in accordance with such plans and specifications, immediately upon the approval by the voters of such issuing of bonds.

**Source:** Laws 1935, Spec. Sess., c. 34, § 13, p. 199; C.S.Supp.,1941, § 18-1913; R.S.1943, § 18-613; Laws 2017, LB339, § 80.  
Operative date July 1, 2017.

**ARTICLE 17**  
**MISCELLANEOUS**

## Section

18-1753. Annexation; additional population; report to Tax Commissioner; calculations.

**18-1753 Annexation; additional population; report to Tax Commissioner; calculations.**

(1) Any city or village annexing territory which thereby adds additional population to the city or village shall report such annexation to the Tax Commissioner. The annexing city or village shall provide the Tax Commissioner with a copy of the ordinance annexing the territory and specify the effective date of the annexation. The annexing city or village shall provide its calculation of the number of additional residents added to the population of the city or village by reason of the annexation and the new combined total population of the city or village and shall inform the Tax Commissioner of the source and date of the federal census relied upon in the calculations.

(2)(a) All calculations of additional population shall be based upon federal census figures from the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

(b) If the boundaries of the territory annexed and those of federal census enumeration districts are the same, or if federal census enumeration districts are wholly contained within the boundaries of the area annexed, the most recent federal census figures for such enumeration districts shall be added directly to the population of the city or village.

(c) If the federal census enumeration districts are partly within and partly without the boundaries of the territory annexed, the federal census figures for such enumeration districts shall be adjusted by reasonable interpretation and supplemented by other evidence to arrive at a figure for the number of people residing in the area annexed as such population existed in that area at the time of the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census. Reasonable interpretation shall include, but not be limited to, the following methods: An actual house count of the annexed territory multiplied by the average number of persons per household as this information existed at the time of the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census; or multiplying the population that existed at the time of the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census in the enumeration district by a ratio of the actual current population of the enumeration district divided in the same manner as the annexation.

(d) The population of the city or village following annexation shall be (i) the population of the city or village as reported by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census or (ii) the population of the city or village as reported by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census plus the population of the territory annexed as calculated in subdivisions (b) and (c) of this subsection.

**Source:** Laws 1993, LB 726, § 1; Laws 1994, LB 1127, § 2; Laws 2017, LB113, § 21.

Effective date August 24, 2017.

ARTICLE 21

COMMUNITY DEVELOPMENT

Section

18-2102.01. Creation of authority or limited authority; name; membership; terms; optional election; officers and employees; quorum; interest in contracts; accounts; loan from city; finances; deposits; audit.

**18-2102.01 Creation of authority or limited authority; name; membership; terms; optional election; officers and employees; quorum; interest in contracts; accounts; loan from city; finances; deposits; audit.**

Cities of all classes and villages of this state are hereby granted power and authority to create community redevelopment authorities and limited community redevelopment authorities.

(1) Whenever an authority or limited authority is created it shall bear the name of the city creating it and shall be legally known as the Community Redevelopment Authority of the City (or Village) of . . . . . (name of city or village) or the Limited Community Redevelopment Authority of the City (or Village) of . . . . . (name of city or village).

(2) When it is determined by the governing body of any city by ordinance in the exercise of its discretion that it is expedient to create a community redevelopment authority or limited community redevelopment authority, the mayor of the city or, if the mayor shall fail to act within ninety days after the passage of the ordinance, the president or other presiding officer other than the mayor of the governing body, with the approval of the governing body of the city, shall appoint five or seven persons who shall constitute the authority or the limited authority. The terms of office of the members of a five-member authority initially appointed shall be for one year, two years, three years, four years, and five years, as designated by the mayor, president, other presiding officer, or city manager in making the respective appointments. The terms of office of the members of a seven-member authority initially appointed shall be one member each for one year, two years, and five years, and two members each for three years and four years, as designated by the mayor, president, other presiding officer, or city manager in making the respective appointments. As the terms of the members of the authority expire in cities not having the city manager form of government, the mayor, with the approval of the governing body of the city, shall appoint or reappoint a member of the authority for a term of five years to succeed the member whose term expires. In cities having the city manager form of government, the city manager shall appoint or reappoint the members with the approval of the governing body. The terms of office of the members of a limited community redevelopment authority shall be for the duration of only one single specific limited pilot project authorized in the ordinance creating the limited community redevelopment authority, and the terms of the members of a limited community redevelopment authority shall expire upon the completion of the single specific limited pilot project authorized in the ordinance creating the limited community redevelopment authority.

A governing body may at its option submit an ordinance which creates a community redevelopment authority or a limited community redevelopment authority to the electors of the city for approval by a majority vote of the electors voting on the ordinance. On submitting the ordinance for approval, the governing body is authorized to call, by the ordinance, a special or general

§ 18-2102.01 CITIES AND VILLAGES; LAWS APPLICABLE TO ALL

election and to submit, after thirty days' notice of the time and place of holding the election and according to the manner and method otherwise provided by law for the calling, conducting, canvassing, and certifying of the result of city elections on the submission of propositions to the electors, the proposition to be stated on the ballot as follows:

Shall the City (or Village) of ..... (name of city or village) create a Community Redevelopment Authority of the City (or Village) of ..... (name of city or village)?

... Yes

... No.

When the ordinance submitted to the electors for approval by a majority vote of the electors voting on the ordinance is to create a limited community redevelopment authority the proposition shall be stated on the ballot as follows:

Shall the City (or Village) of ..... (name of city or village) create a Limited Community Redevelopment Authority of the City (or Village) of ..... (name of city or village)?

... Yes

... No.

Vacancies shall be filled for any unexpired term in the same manner as the original appointment. Members of the authority so appointed shall hold office until their successors have been appointed and qualified. Members of a limited authority shall hold office as provided in this section. All members of the authority shall serve without compensation, but shall be entitled to be reimbursed for all necessary expenses incurred.

(3) Any authority established under this section shall organize by electing one of its members chairperson and another vice-chairperson, shall have power to employ counsel, a director who shall be ex officio secretary of the authority, and such other officers and employees as may be desired, and shall fix the term of office, qualifications, and compensation of each. The holder of the office of community redevelopment administrator or coordinator of the city may, but need not, be appointed the director but at no additional compensation by the authority. Community redevelopment authorities of cities of the first and second class and villages may secure the services of a director, community redevelopment administrator, or coordinator, and other officers and employees as may be desired through contract with the Department of Economic Development upon terms which are mutually agreeable. Any authority established under this section may validly and effectively act on all matters requiring a resolution or other official action by the concurrence of three members of a five-member authority or four members of a seven-member authority present and voting at a meeting of the authority. Orders, requisitions, warrants, and other documents may be executed by the chairperson or vice-chairperson or by or with others designated in its bylaws.

(4) No member or employee of any authority established under this section shall have any interest directly or indirectly in any contract for property, materials, or services to be required by such authority. No member of any authority established under this section shall also be a member of any planning commission created under section 19-925.



(5) The authority shall keep an accurate account of all its activities and of all receipts and disbursements and make an annual report of such activities, receipts, and disbursements to the governing body of the city.

(6) The governing body of a city creating a community redevelopment authority or a limited community redevelopment authority is hereby authorized to appropriate and loan to the authority a sum not exceeding ten thousand dollars for the purposes of paying expenses of organizing and supervising the work of the authority at the beginning of its activities. The loan shall be authorized by resolution of the governing body which shall set forth the terms and time of the repayment of the loan. The loan may be appropriated out of the general funds or any sinking fund.

(7) All income, revenue, profits, and other funds received by any authority established under this section from whatever source derived, or appropriated by the city, or realized from tax receipts or comprised in the special revenue fund of the city designated for the authority or from the proceeds of bonds, or otherwise, shall be deposited with the city treasurer as ex officio treasurer of the authority without commingling the money with any other money under his or her control and disbursed by him or her by check, draft, or order only upon warrants, orders, or requisitions by the chairperson of the authority or other person authorized by the authority which shall state distinctly the purpose for which the same are drawn. A permanent record shall be kept by the authority of all warrants, orders, or requisitions so drawn, showing the date, amount, consideration, and to whom payable. When paid, the same shall be canceled and kept on file by the city treasurer. The books of any authority established under this section shall from time to time be audited upon the order of the governing body of the municipality in such manner as it may direct, and all books and records of the authority shall at all times be open to public inspection. The authority may contract with the holders of any of its bonds or notes as to collection, custody, securing investment, and payment of any money of the authority or any money held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes. The authority may carry out the contract notwithstanding that such contract may be inconsistent with the previous provisions of this subdivision. All banks, capital stock financial institutions, qualifying mutual financial institutions, and trust companies are hereby authorized to give security for the deposits of money of any authority established under the provisions of this section pursuant to the Public Funds Deposit Security Act. Section 77-2366 applies to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

**Source:** Laws 1957, c. 52, § 3, p. 248; Laws 1961, c. 61, § 2, p. 224; Laws 1963, c. 89, § 9, p. 307; R.S.Supp., 1963, § 19-2602.01; Laws 1965, c. 74, § 2, p. 300; Laws 1967, c. 87, § 1, p. 273; Laws 1969, c. 106, § 1, p. 484; Laws 1969, c. 107, § 1, p. 499; Laws 1989, LB 33, § 23; Laws 1997, LB 875, § 4; Laws 1999, LB 396, § 19; Laws 2001, LB 362, § 26; Laws 2009, LB339, § 1; Laws 2017, LB383, § 1.

Effective date August 24, 2017.

**Cross References**

**Public Funds Deposit Security Act**, see section 77-2386.

## ARTICLE 27

## MUNICIPAL ECONOMIC DEVELOPMENT

## Section

18-2709. Qualifying business, defined.

18-2713. Election; procedures.

18-2715. Citizen advisory review committee; membership; meetings; powers; unauthorized disclosure of information; penalty.

**18-2709 Qualifying business, defined.**

(1) Qualifying business means any corporation, partnership, limited liability company, or sole proprietorship which derives its principal source of income from any of the following: The manufacture of articles of commerce; the conduct of research and development; the processing, storage, transport, or sale of goods or commodities which are sold or traded in interstate commerce; the sale of services in interstate commerce; headquarters facilities relating to eligible activities as listed in this section; telecommunications activities, including services providing advanced telecommunications capability; tourism-related activities; or the production of films, including feature, independent, and documentary films, commercials, and television programs.

(2) Qualifying business also means:

(a) In cities of the first and second class and villages, a business that derives its principal source of income from the construction or rehabilitation of housing;

(b) A business that derives its principal source of income from retail trade, except that no more than forty percent of the total revenue generated pursuant to the Local Option Municipal Economic Development Act for an economic development program in any twelve-month period and no more than twenty percent of the total revenue generated pursuant to the act for an economic development program in any five-year period, commencing from the date of municipal approval of an economic development program, shall be used by the city for or devoted to the use of retail trade businesses. For purposes of this subdivision, retail trade means a business which is principally engaged in the sale of goods or commodities to ultimate consumers for their own use or consumption and not for resale; and

(c) In cities with a population of two thousand five hundred inhabitants or less as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, a business shall be a qualifying business even though it derives its principal source of income from activities other than those set out in this section.

(3) If a business which would otherwise be a qualifying business employs people and carries on activities in more than one city in Nebraska or will do so at any time during the first year following its application for participation in an economic development program, it shall be a qualifying business only if, in each such city, it maintains employment for the first two years following the date on which such business begins operations in the city as a participant in its economic development program at a level not less than its average employment in such city over the twelve-month period preceding participation.

(4) A qualifying business need not be located within the territorial boundaries of the city from which it is or will be receiving financial assistance.

(5) Qualifying business does not include a political subdivision, a state agency, or any other governmental entity, except as allowed for cities of the first and second class and villages for rural infrastructure development as provided for in subsection (4) of section 18-2705.

**Source:** Laws 1991, LB 840, § 10; Laws 1993, LB 121, § 145; Laws 1993, LB 732, § 18; Laws 1994, LB 1188, § 1; Laws 1995, LB 207, § 4; Laws 2001, LB 827, § 14; Laws 2011, LB471, § 2; Laws 2012, LB863, § 2; Laws 2015, LB150, § 2; Laws 2017, LB113, § 22. Effective date August 24, 2017.

#### **18-2713 Election; procedures.**

Before adopting an economic development program, a city shall submit the question of its adoption to the registered voters at an election. The governing body of the city shall order the submission of the question by filing a certified copy of the resolution proposing the economic development program with the election commissioner or county clerk not later than fifty days prior to a special election or a municipal primary or general election which is not held at the statewide primary or general election or not later than March 1 prior to a statewide primary election or September 1 prior to a statewide general election. The question on the ballot shall briefly set out the terms, conditions, and goals of the proposed economic development program, including the length of time during which the program will be in existence, the year or years within which the funds from local sources of revenue are to be collected, the source or sources from which the funds are to be collected, the total amount to be collected for the program from local sources of revenue, and whether the city proposes to issue bonds pursuant to the Local Option Municipal Economic Development Act to provide funds to carry out the economic development program. The ballot question shall also specify whether additional funds from other noncity sources will be sought beyond those derived from local sources of revenue. In addition to all other information, if the funds are to be derived from the city's property tax, the ballot question shall state the present annual cost of the economic development program per ten thousand dollars of assessed valuation based upon the most recent valuation of the city certified to the Property Tax Administrator pursuant to section 77-1613.01. The ballot question shall state: "Shall the city of (name of the city) establish an economic development program as described here by appropriating annually from local sources of revenue \$. . . . . for . . . . . years?". If the only city revenue source for the proposed economic development program is a local option sales tax that has not yet been approved at an election, the ballot question specifications in this section may be repeated in the sales tax ballot question.

If a majority of those voting on the issue vote in favor of the question, the governing body may implement the proposed economic development program upon the terms set out in the resolution. If a majority of those voting on the economic development program vote in favor of the question when the only city revenue source is a proposed sales tax and a majority of those voting on the local option sales tax vote against the question, the governing body shall not implement the economic development program, and it shall become null and void. If a majority of those voting on the issue vote against the question, the governing body shall not implement the economic development program.

**Source:** Laws 1991, LB 840, § 14; Laws 1993, LB 732, § 22; Laws 1995, LB 490, § 23; Laws 2017, LB451, § 1. Effective date August 24, 2017.

**18-2715 Citizen advisory review committee; membership; meetings; powers; unauthorized disclosure of information; penalty.**

(1) The ordinance establishing the economic development program shall provide for the creation of a citizen advisory review committee. The committee shall consist of not less than five or more than ten registered voters of the city who shall be appointed to the committee by the mayor or chairperson subject to approval by the governing body of the city. At least one member of the committee shall have expertise or experience in the field of business finance or accounting. The ordinance shall designate an appropriate city official or employee with responsibility for the administration of the economic development program to serve as an ex officio member of the committee with responsibility for assisting the committee and providing it with necessary information and advice on the economic development program.

(2) No member of the citizen advisory review committee shall be an elected or appointed city official, a member of any planning commission created under section 19-925, an employee of the city, a participant in a decisionmaking position regarding expenditures of program funds, or an official or employee of any qualifying business receiving financial assistance under the economic development program or of any financial institution participating directly in the economic development program.

(3) The ordinance shall provide for regular meetings of the citizen advisory review committee to review the functioning and progress of the economic development program and to advise the governing body of the city with regard to the program. At least once in every six-month period after the effective date of the ordinance, the committee shall report to the governing body on its findings and suggestions at a public hearing called for that purpose.

(4) Members of the citizen advisory review committee, in their capacity as members and consistent with their responsibilities as members, may be permitted access to business information received by the city in the course of its administration of the economic development program, which information would otherwise be confidential (a) under section 84-712.05, (b) by agreement with a qualifying business participating in the economic development program, or (c) under any ordinance of the city providing access to such records to members of the committee and guaranteeing the confidentiality of business information received by reason of its administration of the economic development program. Such ordinance may provide that unauthorized disclosure of any business information which is confidential under section 84-712.05 shall be a Class III misdemeanor.

**Source:** Laws 1991, LB 840, § 16; Laws 1993, LB 732, § 23; Laws 2017, LB383, § 2.  
Effective date August 24, 2017.

**ARTICLE 29**

**URBAN GROWTH DISTRICTS**

Section  
18-2901. Urban growth district; authorized; urban growth bonds and refunding bonds.

**18-2901 Urban growth district; authorized; urban growth bonds and refunding bonds.**

(1) The Legislature recognizes that there is a growing concern among municipalities that infrastructure costs and needs are great, especially in areas

that are on the edge of or near the municipal boundaries and in need of development resources, and the governing bodies of municipalities must identify and develop financing mechanisms to respond to all infrastructure needs in an effective and efficient manner. The authorization of urban growth bonds, with local option sales and use tax revenue identified as the source of financing for the bonds, will encourage municipalities to use such revenue to bond infrastructure needs.

(2) The governing body of a municipality may create one or more urban growth districts for the purpose of using local option sales and use tax revenue to finance municipal infrastructure needs. An urban growth district may be in an area along the edge of a municipality's boundary or in any other growth area designated by the governing body, except that the territory of each urban growth district shall be (a) within the municipality's corporate limits and (b) outside the municipality's corporate limits as they existed as of the date twenty years prior to the creation of the urban growth district.

(3) The governing body shall establish an urban growth district by ordinance. The ordinance shall include:

(a) A description of the boundaries of the proposed district; and

(b) The local option sales tax rate and estimated urban growth local option sales and use tax revenue anticipated to be identified as a result of the creation of the district.

(4) Any municipality that has established an urban growth district may, by ordinance approved by a vote of two-thirds of the members of its governing body, authorize the issuance of urban growth bonds and refunding bonds to finance and refinance the construction or improvement of roads, streets, streetscapes, bridges, and related structures within the urban growth district and in any other area of the municipality. The bonds shall be secured as to payment by a pledge, as determined by the municipality, of the urban growth local option sales and use tax revenue and shall mature not later than twenty-five years after the date of issuance. Annual debt service on all bonds issued with respect to an urban growth district pursuant to this section shall not exceed the urban growth local option sales and use tax revenue with respect to such district for the fiscal year prior to the fiscal year in which the current series of such bonds are issued. For purposes of this section, urban growth local option sales and use tax revenue means the municipality's total local option sales and use tax revenue multiplied by the ratio of the area included in the urban growth district to the total area of the municipality.

(5) The issuance of urban growth bonds by any municipality under the authority of this section shall not be subject to any charter or statutory limitations of indebtedness or be subject to any restrictions imposed upon or conditions precedent to the exercise of the powers of municipalities to issue bonds or evidences of indebtedness which may be contained in such charters or other statutes. Any municipality which issues urban growth bonds under the authority of this section shall levy property taxes upon all the taxable property in the municipality at such rate or rates within any applicable charter, statutory, or constitutional limitations as will provide funds which, together with the urban growth local option sales and use tax revenue pledged to the payment of such bonds and any other money made available and used for that purpose, will

be sufficient to pay the principal of and interest on such urban growth bonds as they severally mature.

**Source:** Laws 2009, LB85, § 1; Laws 2017, LB131, § 1.  
Effective date August 24, 2017.

### ARTICLE 30

#### PLANNED UNIT DEVELOPMENT

Section

18-3001. Planned unit development ordinance; authorized; planned unit development approval; conditions.

**18-3001 Planned unit development ordinance; authorized; planned unit development approval; conditions.**

(1) Except as provided in subsection (5) of this section and notwithstanding any provisions of Chapter 14, article 4, Chapter 15, article 9, Chapter 19, article 9, or of any home rule charter to the contrary, every city or village may include within its zoning ordinance provisions authorizing and regulating planned unit developments within such city or village or within the zoning jurisdiction of such city or village, except such cities or villages shall not have authority to impose such power over other organized cities or villages within the zoning jurisdiction of such cities or villages. As used in this section, planned unit development includes any development of a parcel of land or an aggregation of contiguous parcels of land to be developed as a single project which proposes density transfers, density increases, and mixing of land uses, or any combination thereof, based upon the application of site planning criteria. The purpose of such ordinance shall be to permit flexibility in the regulation of land development, to encourage innovation in land use and variety in design, layout, and type of structures constructed, to achieve economy and efficiency in the use of land, natural resources, and energy and the provision of public services and utilities, to encourage the preservation and provision of useful open space, and to provide improved housing, employment, or shopping opportunities particularly suited to the needs of an area.

(2) An ordinance authorizing and regulating planned unit developments shall establish criteria relating to the review of proposed planned unit developments to ensure that the land use or activity proposed through a planned unit development shall be compatible with adjacent uses of land and the capacities of public services and utilities affected by such planned unit development and to ensure that the approval of such planned unit development is consistent with the public health, safety, and general welfare of the city or village and is in accordance with the comprehensive plan.

(3) Within a planned unit development, regulations relating to the use of land, including permitted uses, lot sizes, setbacks, height limits, required facilities, buffers, open spaces, roadway and parking design, and land-use density shall be determined in accordance with the planned unit development regulations specified in the zoning ordinance. The planned unit development regulations need not be uniform with regard to each type of land use.

(4) The approval of planned unit developments, as authorized under a planned unit development ordinance, shall be generally similar to the procedures established for the approval of zone changes. In approving any planned unit development, a city or village may, either as a condition of the ordinance

approving a planned unit development, by covenant, by separate agreement, or otherwise, impose reasonable conditions as deemed necessary to ensure that a planned unit development shall be compatible with adjacent uses of land, will not overburden public services and facilities, and will not be detrimental to the public health, safety, and welfare. Such conditions or agreements may provide for dedications of land for public purposes.

(5) Except as provided in subsection (6) of this section, a city of the second class or village located in a county that has adopted a comprehensive development plan which meets the requirements of section 23-114.02 and is enforcing subdivision regulations shall not finally approve a planned unit development upon property located outside of the corporate boundaries of the city or village until the plans for the planned unit development have been submitted to, reviewed, and approved by the county’s planning commission pursuant to subsection (4) of section 17-1002.

(6) A city of the second class or village located in whole or in part within the boundaries of a county having a population in excess of one hundred thousand inhabitants but less than two hundred fifty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census that has adopted a comprehensive development plan which meets the requirements of section 23-114.02 and is enforcing subdivision regulations shall not finally approve a planned unit development upon property located outside of the corporate boundaries of the city or village until the plans for the planned unit development have been submitted to the county’s planning department and public works department for review.

**Source:** Laws 1983, LB 135, § 1; R.S.1943, (2007), § 19-4401; Laws 2011, LB146, § 1; Laws 2016, LB875, § 1; Laws 2017, LB74, § 4. Effective date August 24, 2017.

**ARTICLE 32**

**PROPERTY ASSESSED CLEAN ENERGY ACT**

- Section
- 18-3201. Transferred to section 13-3201.
- 18-3202. Transferred to section 13-3202.
- 18-3203. Transferred to section 13-3203.
- 18-3204. Transferred to section 13-3204.
- 18-3205. Transferred to section 13-3205.
- 18-3206. Transferred to section 13-3206.
- 18-3207. Transferred to section 13-3207.
- 18-3208. Transferred to section 13-3208.
- 18-3209. Transferred to section 13-3209.
- 18-3210. Transferred to section 13-3210.
- 18-3211. Transferred to section 13-3211.

**18-3201 Transferred to section 13-3201.**

**18-3202 Transferred to section 13-3202.**

**18-3203 Transferred to section 13-3203.**

**18-3204 Transferred to section 13-3204.**

**18-3205 Transferred to section 13-3205.**

**18-3206 Transferred to section 13-3206.**

**18-3207 Transferred to section 13-3207.**

**18-3208 Transferred to section 13-3208.**

**18-3209 Transferred to section 13-3209.**

**18-3210 Transferred to section 13-3210.**

**18-3211 Transferred to section 13-3211.**

### **ARTICLE 33 ANNEXATION**

Section

- 18-3301. Contiguous land; annexation; plat; approval; recording; effect.
- 18-3302. City or village in two or more counties; annexation; petition of owners; procedure.
- 18-3303. State-owned land; effect of annexation.
- 18-3304. Additions; plat; contents; duty to file.
- 18-3305. Additions; plat; acknowledgment; filing.
- 18-3306. Additions; plat; acknowledgment and recording; effect.
- 18-3307. Additions; streets and alleys.
- 18-3308. Additions; plat; how vacated; approval required.
- 18-3309. Additions; plats; vacation of part; effect.
- 18-3310. Additions; plat; vacation of part; rights of owners.
- 18-3311. Additions; plat; vacation; recording.
- 18-3312. Additions; plat; vacation; right of owner to plat.
- 18-3313. Additions; plat; failure to execute and record; power of county clerk; costs; collection.
- 18-3314. Land less than forty acres; ownership in severalty; county clerk may plat.
- 18-3315. Additions; lots; sale before platting; penalty.

**18-3301 Contiguous land; annexation; plat; approval; recording; effect.**

(1) Whenever the owner or owners or a majority of the owners of any territory lying contiguous to the corporate limits of any city or village, whether the territory be already in fact subdivided into lots or parcels of ten acres or less or remains unsubdivided, except as provided in section 13-1115, shall desire to annex such territory to any city or village, they shall first cause an accurate plat or map of the territory to be made, showing such territory subdivided into blocks and lots, conforming as nearly as may be to the blocks, lots, and streets of the adjacent city or village. It shall also show the descriptions and numberings, as provided in section 18-3304, for platting additions, and conforming thereto as nearly as may be.

(2) Such plat or map shall be prepared under the supervision of the city engineer in cases of annexation to adjacent cities, under the supervision of the village engineer in cases of annexation to adjacent villages, and under the supervision of a competent surveyor in any case. A copy of such plat or map, certified by such engineer or surveyor, as the case may be, shall be filed in the office of the city clerk or village clerk, together with a request in writing, signed by a majority of the property owners of the territory described in such plat for the annexation of such territory. The city council or village board of trustees shall, at the next regular meeting after the filing of such plat and request for annexation, vote upon the question of such annexation, and such vote shall be recorded in the minutes of such city council or village board of trustees. If a



majority of all the members of the city council or village board of trustees vote for such annexation, an ordinance shall be prepared and passed by the city council or village board of trustees declaring the annexation of such territory to the corporate limits of the city or village.

(3) An accurate map or plat of such territory certified by the city engineer, village engineer, or surveyor and acknowledged and proved as provided by law in such cases shall at once be filed and recorded in the office of the county clerk or register of deeds and county assessor of the proper county, together with a certified copy of the ordinance declaring such annexation, under the seal of the city or village. Upon such filing, the annexation of the adjacent territory shall be deemed complete, and the territory included and described in the plat on file in the office of the county clerk or register of deeds shall be deemed and held to be a part of such city or village, and the inhabitants of such territory shall thereafter enjoy the privileges and benefits of such annexation and be subject to the ordinances and regulations of such city or village.

**Source:** Laws 1879, § 95, p. 229; Laws 1881, c. 23, § 10, p. 188; R.S.1913, § 5086; C.S.1922, § 4253; C.S.1929, § 17-407; R.S. 1943, § 17-405; Laws 1957, c. 51, § 11, p. 243; Laws 1965, c. 64, § 1, p. 281; Laws 1974, LB 757, § 4; R.S.1943, (2012), § 17-405; Laws 2017, LB133, § 312.  
Effective date August 24, 2017.

**18-3302 City or village in two or more counties; annexation; petition of owners; procedure.**

Whenever the owner, owners, or a majority of the owners of any territory lying contiguous to the corporate limits of any city or village, the corporate limits of which city or village is situated in two or more counties and, whether the territory shall be situated within or without the counties of which such city or village is a part, except as provided in section 13-1115, shall desire to annex such territory to such city or village, such territory may be annexed in the manner provided in section 18-3301 and when so annexed shall thereafter be a part of such city or village.

**Source:** Laws 1903, c. 23, § 1, p. 259; R.S.1913, § 5087; C.S.1922, § 4259; C.S.1929, § 17-408; R.S.1943, § 17-406; Laws 1957, c. 51, § 12, p. 245; R.S.1943, (2012), § 17-406; Laws 2017, LB133, § 313.  
Effective date August 24, 2017.

**18-3303 State-owned land; effect of annexation.**

The extension of the corporate limits of any city or village beyond or around any lands belonging to the State of Nebraska shall not affect the status of such state land.

**Source:** Laws 1917, c. 101, § 2, p. 267; C.S.1922, § 4261; C.S.1929, § 17-410; R.S.1943, § 17-412; R.S.1943, (2012), § 17-412; Laws 2017, LB133, § 314.  
Effective date August 24, 2017.

**18-3304 Additions; plat; contents; duty to file.**

Every original owner of any tract or parcel of land, who shall subdivide such tract or parcel into two or more parts for the purpose of laying out any city or

village or an addition to any city or village, or suburban lots, shall cause a plat of such subdivision, with references to known or permanent monuments, to be made, which shall accurately describe all subdivisions of such tract or parcel of land, numbering such tract or parcel by progressive numbers, and giving the dimensions and length and breadth of such tract or parcel, and the breadth and courses of all streets and alleys established therein. Descriptions of lots or parcels of land in such subdivisions, according to the number and designation on such plat, in conveyances or for the purposes of taxation, shall be deemed good and valid for all purposes. The duty to file for record a plat as provided in sections 18-3304 to 18-3315 shall attach as a covenant of warranty in all conveyances made of any part or parcel of such subdivision by the original owners against any and all assessments, costs, and damages paid, lost, or incurred by any grantee in consequence of the omission on the part of the owner filing such plat.

**Source:** Laws 1879, § 104, p. 233; R.S.1913, § 5092; C.S.1922, § 4265; C.S.1929, § 17-414; R.S.1943, § 17-415; Laws 1967, c. 75, § 3, p. 243; R.S.1943, (2012), § 17-415; Laws 2017, LB133, § 315. Effective date August 24, 2017.

#### **18-3305 Additions; plat; acknowledgment; filing.**

Every plat created pursuant to section 18-3304 shall contain a statement to the effect that the subdivision of (here insert a correct description of the land or parcel subdivided), as appears on this plat, is made with the free consent and in accordance with the desire of the undersigned owners and shall be duly acknowledged before some officer authorized to take the acknowledgment of deeds. When thus executed and acknowledged, the plat shall be filed for record and recorded in the office of the register of deeds and county assessor of the proper county.

**Source:** Laws 1879, § 105, p. 234; R.S.1913, § 5093; C.S.1922, § 4266; C.S.1929, § 17-415; R.S.1943, § 17-416; Laws 1974, LB 757, § 5; R.S.1943, (2012), § 17-416; Laws 2017, LB133, § 316. Effective date August 24, 2017.

#### **18-3306 Additions; plat; acknowledgment and recording; effect.**

The acknowledgment and recording of a plat created pursuant to section 18-3304 is equivalent to a deed in fee simple of such portion of the premises platted as is on such plat set apart for streets or other public use or as is on such plat dedicated to charitable, religious, or educational purposes.

**Source:** Laws 1879, § 106, p. 234; R.S.1913, § 5094; C.S.1922, § 4267; C.S.1929, § 17-416; R.S.1943, § 17-417; R.S.1943, (2012), § 17-417; Laws 2017, LB133, § 317. Effective date August 24, 2017.

#### **18-3307 Additions; streets and alleys.**

Streets and alleys laid out in any addition to any city or village shall be continuous with and correspond in direction and width to the streets and alleys of the city or village to which they are in addition.

**Source:** Laws 1879, § 107, p. 234; R.S.1913, § 5095; C.S.1922, § 4268; C.S.1929, § 17-417; R.S.1943, § 17-418; R.S.1943, (2012), § 17-418; Laws 2017, LB133, § 318. Effective date August 24, 2017.

**18-3308 Additions; plat; how vacated; approval required.**

Any plat created pursuant to section 18-3304 may be vacated at any time before the sale of any lots contained in such plat by a written instrument declaring such plat to be vacated. Such written instrument shall be approved by the city council or village board of trustees and shall be duly executed, acknowledged, or proved, and recorded in the same office with the plat to be vacated. The execution and recording of such written instrument shall operate to destroy the force and effect of the recording of the plat so vacated and to divest all public rights in the streets, alleys, commons, and public grounds laid out or described in such plat. In cases when any lots have been sold, the plat may be vacated, as provided in this section, by all the owners of lots in such plat joining in the execution of such written instrument.

**Source:** Laws 1879, § 108, p. 234; R.S.1913, § 5096; C.S.1922, § 4269; C.S.1929, § 17-418; R.S.1943, § 17-419; Laws 1985, LB 51, § 1; R.S.1943, (2012), § 17-419; Laws 2017, LB133, § 319.  
Effective date August 24, 2017.

**18-3309 Additions; plats; vacation of part; effect.**

Any part of a plat may be vacated under section 18-3308. Such vacating does not abridge or destroy any of the rights and privileges of other property owners in such plat. Nothing contained in this section shall authorize the closing or obstructing of any public highways laid out according to law.

**Source:** Laws 1879, § 109, p. 235; R.S.1913, § 5097; C.S.1922, § 4270; C.S.1929, § 17-419; R.S.1943, § 17-420; R.S.1943, (2012), § 17-420; Laws 2017, LB133, § 320.  
Effective date August 24, 2017.

**18-3310 Additions; plat; vacation of part; rights of owners.**

When any part of a plat shall be vacated as provided in section 18-3308, the owners of the lots so vacated may enclose the streets, alleys, and public grounds adjoining such lots in equal proportions.

**Source:** Laws 1879, § 110, p. 235; R.S.1913, § 5098; C.S.1922, § 4271; C.S.1929, § 17-420; R.S.1943, § 17-421; R.S.1943, (2012), § 17-421; Laws 2017, LB133, § 321.  
Effective date August 24, 2017.

**18-3311 Additions; plat; vacation; recording.**

The county clerk in whose office any vacated plats are recorded shall write in plain, legible letters across that part of such plat so vacated the word, vacated, and also make a reference on the plat to the volume and page in which such instrument of vacation is recorded.

**Source:** Laws 1879, § 111, p. 235; R.S.1913, § 5099; C.S.1922, § 4272; C.S.1929, § 17-421; R.S.1943, § 17-422; R.S.1943, (2012), § 17-422; Laws 2017, LB133, § 322.  
Effective date August 24, 2017.

**18-3312 Additions; plat; vacation; right of owner to plat.**

The owner of any lots in a plat vacated under section 18-3308 may cause such lots and a proportionate part of adjacent streets and public grounds to be

platted and numbered by the county surveyor. When such plat is acknowledged by such owner and is recorded in the record office of the county, such lots may be conveyed and assessed by the numbers given them on such plat.

**Source:** Laws 1879, § 112, p. 235; R.S.1913, § 5100; C.S.1922, § 4273; C.S.1929, § 17-422; R.S.1943, § 17-423; R.S.1943, (2012), § 17-423; Laws 2017, LB133, § 323.  
Effective date August 24, 2017.

**18-3313 Additions; plat; failure to execute and record; power of county clerk; costs; collection.**

Whenever the original owners of any subdivision of land as provided in sections 18-3304 and 18-3305 have sold or conveyed any part of such subdivision or invested the public with any rights in such subdivision and have failed and neglected to execute and file for record a plat as provided in sections 18-3304 and 18-3305, the county clerk shall notify such owners by certified mail and demand an execution of such plat as required by law. If such owners fail and neglect to execute and file for record such plat for thirty days following the issuance of such notice, the county clerk shall cause the plat of such subdivision to be made, along with any necessary surveying. Such plat shall be signed and acknowledged by the county clerk, who shall certify that he or she executed it by reason of the failure of the owners required to do so, and filed for record. When so filed for record, it shall have the same effect for all purposes as if executed, acknowledged, and recorded by the owners themselves. A correct statement of the costs and expenses of such plat, surveying, and recording, verified by oath, shall be submitted by the county clerk to the county board, who shall allow such costs and expenses to be paid out of the county treasury and shall assess such amount, pro rata, upon all subdivisions of such tract, lot, or parcel so subdivided. Such assessment shall be collected with and in like manner as the general taxes and shall go to the county general fund. The county board may also direct suit to be brought in the name of the county, before any court having jurisdiction, to recover from the original owners the cost and expense of procuring and recording such plat.

**Source:** Laws 1879, § 113, p. 235; R.S.1913, § 5101; C.S.1922, § 4274; C.S.1929, § 17-423; R.S.1943, § 17-424; R.S.1943, (2012), § 17-424; Laws 2017, LB133, § 324.  
Effective date August 24, 2017.

**18-3314 Land less than forty acres; ownership in severalty; county clerk may plat.**

Whenever any subdivision of land of forty acres or less or any lot or subdivision is owned by two or more persons in severalty, and the description of one or more of the different parts or parcels cannot, in the judgment of the county clerk, be made sufficiently certain and accurate for the purpose of assessment and taxation without noting the metes and bounds of such parts or parcels, the county clerk shall require and cause to be made and recorded a plat of such tract or lot of land with its several subdivisions, in accordance with section 18-3304. The county clerk shall proceed in such cases according to section 18-3313, and all the provisions of law in relation to the plats of cities

and villages shall govern any tracts and parcels of land platted pursuant to this section.

**Source:** Laws 1879, § 114, p. 236; R.S.1913, § 5102; C.S.1922, § 4275; C.S.1929, § 17-424; R.S.1943, § 17-425; R.S.1943, (2012), § 17-425; Laws 2017, LB133, § 325.  
Effective date August 24, 2017.

**18-3315 Additions; lots; sale before platting; penalty.**

Any person who sells or offers for sale or lease any lots in any municipality or addition to any municipality, before the plat of such lots has been duly acknowledged and recorded as provided in section 18-3305, shall pay a penalty of fifty dollars for each lot or part of lot sold, leased, or offered for sale.

**Source:** Laws 1879, § 116, p. 237; R.S.1913, § 5104; C.S.1922, § 4277; C.S.1929, § 17-426; R.S.1943, § 17-426; R.S.1943, (2012), § 17-426; Laws 2017, LB133, § 326.  
Effective date August 24, 2017.



**CHAPTER 19**  
**CITIES AND VILLAGES; LAWS APPLICABLE**  
**TO MORE THAN ONE AND LESS THAN**  
**ALL CLASSES**

## Article.

1. Municipal Development Funds. (Applicable to cities of the metropolitan or primary class.) 19-102, 19-103.
4. Commission Form of Government. (Applicable to cities of 2,000 population or over.) 19-401 to 19-418.
5. Charter Convention. (Applicable to cities over 5,000 population.) 19-501.
6. City Manager Plan. (Applicable to cities of 1,000 population or more and less than 200,000.)  
 (a) General Provisions. 19-602.
9. City Planning, Zoning. (Applicable to cities of the first or second class and villages.) 19-926.
11. Treasurer's Report and Council Proceedings; Publication. 19-1101, 19-1102.
18. Civil Service Act. 19-1827.
35. Pension Plans. (Applicable to cities of the first or second class and villages.) 19-3501.
40. Business Improvement Districts. (Applicable to all cities.) 19-4030, 19-4031.
51. Investment of Public Endowment Funds. (Applicable to cities of more than 5,000 population.) 19-5101.
53. Riverfront Development District Act. 19-5301 to 19-5317.

## ARTICLE 1

## MUNICIPAL DEVELOPMENT FUNDS

**(Applicable to cities of the metropolitan or primary class.)**

## Section

- 19-102. City of the Primary Class Development Fund; created; use; investment.  
 19-103. City of the Metropolitan Class Development Fund; created; use; investment.

**19-102 City of the Primary Class Development Fund; created; use; investment.**

There is hereby created the City of the Primary Class Development Fund. Amounts credited to the fund pursuant to section 77-2602 shall, upon appropriation by the Legislature, be first expended to support the design and development of the Antelope Valley project and financing costs related thereto for the Antelope Valley Study as outlined in the Environmental Impact Statement and Comprehensive Plan Amendment 94-60 to the 1994 Lincoln/Lancaster County Comprehensive Plan. 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 distribution from the fund shall be made unless the city of the primary class provides matching funds equal to the ratio of one dollar for each three dollars of the state distribution. Funds derived from any state source may not be utilized as matching funds for purposes of this section.

The State Treasurer shall transfer the unobligated balance in the City of the Primary Class Development Fund to the General Fund on July 1, 2017, or as

soon thereafter as administratively possible, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services. On July 8, 2017, the City of the Primary Class Development Fund shall terminate.

**Source:** Laws 2001, LB 657, § 2; Laws 2017, LB331, § 19.  
Effective date May 16, 2017.

Cross References

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**19-103 City of the Metropolitan Class Development Fund; created; use; investment.**

There is hereby created the City of the Metropolitan Class Development Fund. Amounts credited to the fund pursuant to section 77-2602 shall, upon appropriation by the Legislature, be first expended to support the design and development of the redevelopment projects within the riverfront redevelopment plan designated for the area along the Missouri River generally north of Interstate 480 to Interstate 680 by the city of Omaha, except that each fiscal year there shall be no distribution from the fund until the finance director of the city certifies that other funds have been encumbered for that calendar year by the city to pay the cost of the combined sewer separation program project east of Seventy-second Street in the city of Omaha. Such certification shall be required only until such sewer separation project is completed or until no cigarette tax money is available to the fund. The amount certified shall be at least seven million dollars each calendar year until 2007 and at least four million dollars each calendar year thereafter. The sewer separation project has such a significant impact on the health and welfare of such a large percentage of the population and on public health in general that the project is a matter of statewide concern. 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 distribution from the fund shall be made unless the city of the metropolitan class provides matching funds equal to the ratio of one dollar for each three dollars of the state distribution. Funds derived from any state source may not be utilized as matching funds for purposes of this section.

The State Treasurer shall transfer the unobligated balance in the City of the Metropolitan Class Development Fund to the General Fund on July 1, 2017, or as soon thereafter as administratively possible, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services. On July 8, 2017, the City of the Metropolitan Class Development Fund shall terminate.

**Source:** Laws 2001, LB 657, § 3; Laws 2017, LB331, § 20.  
Effective date May 16, 2017.

Cross References

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.



## ARTICLE 4

**COMMISSION FORM OF GOVERNMENT**  
**(Applicable to cities of 2,000 population or over.)**

## Section

- 19-401. Commission plan; population requirement.  
 19-414. Council; departments; assignment of duties.  
 19-415. Mayor; council members; powers and duties; heads of departments.  
 19-418. City council; meetings; quorum.

**19-401 Commission plan; population requirement.**

Any city in this state having not less than two thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census may adopt the commission form of government and be governed thereunder by proceeding as provided in sections 19-401 to 19-433.

**Source:** Laws 1911, c. 24, § 1, p. 150; R.S.1913, § 5288; Laws 1919, c. 35, § 1, p. 113; C.S.1922, § 4511; Laws 1923, c. 141, § 1, p. 344; C.S.1929, § 19-401; R.S.1943, § 19-401; Laws 2017, LB113, § 23.

Effective date August 24, 2017.

**19-414 Council; departments; assignment of duties.**

The executive and administrative powers, authorities, and duties in cities adopting the commission plan of government shall be distributed into and among departments as follows:

In cities of the metropolitan class, (1) department of public affairs, (2) department of accounts and finances, (3) department of police, sanitation, and public safety, (4) department of fire protection and water supply, (5) department of street cleaning and maintenance, (6) department of public improvements, and (7) department of parks and public property;

In cities of the primary class, (1) department of public affairs, (2) department of accounts and finances, (3) department of public safety, (4) department of streets and public improvements, and (5) department of parks and public property; and

In cities containing two thousand or more and not more than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, (1) department of public affairs and public safety, (2) department of accounts and finances, (3) department of streets, public improvements, and public property, (4) department of public works, and (5) department of parks and recreation.

The city council shall provide, as nearly as possible, the powers and duties to be exercised and performed by, and assign them to, the appropriate departments. The city council may prescribe the powers and duties of all officers and employees of the city and may assign particular officers, or employees, to more than one of the departments, may require any officer or employee to perform duties in two or more of the departments, and may make such other rules and

regulations as may be necessary or proper for the efficient and economical management of the business affairs of the city.

**Source:** Laws 1911, c. 24, § 11, p. 159; Laws 1913, c. 21, § 7, p. 92; R.S.1913, § 5298; C.S.1922, § 4521; Laws 1923, c. 141, § 7, p. 351; C.S.1929, § 19-411; R.S.1943, § 19-414; Laws 1955, c. 55, § 3, p. 179; Laws 1979, LB 281, § 3; Laws 2017, LB113, § 24. Effective date August 24, 2017.

**19-415 Mayor; council members; powers and duties; heads of departments.**

In cities of the metropolitan class, the city council shall consist of the mayor who shall be superintendent of the department of public affairs, one council member to be superintendent of the department of accounts and finances, one council member to be superintendent of the department of police, sanitation, and public safety, one council member to be superintendent of the department of fire protection and water supply, one council member to be superintendent of the department of street cleaning and maintenance, one council member to be superintendent of the department of public improvements, and one council member to be superintendent of parks and public property.

In cities containing at least forty thousand and less than three hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the city council shall consist of the mayor who shall be superintendent of the department of public affairs, one council member to be superintendent of the department of accounts and finances, one council member to be superintendent of the department of public safety, one council member to be superintendent of the department of streets and public improvements, and one council member to be superintendent of the department of parks and public property.

In cities containing at least two thousand and less than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the city council shall consist of the mayor who shall be commissioner of the department of public affairs and public safety, one council member to be commissioner of the department of streets, public improvements and public property, one council member to be commissioner of the department of public accounts and finances, one council member to be commissioner of the department of public works, and one council member to be commissioner of the department of parks and recreation.

In all of such cities the commissioner of the department of accounts and finances shall be vice president of the city council and shall, in the absence or inability of the mayor to serve, perform the duties of the mayor. In case of vacancy in the office of mayor by death or otherwise, the vacancy shall be filled as provided in section 32-568.

**Source:** Laws 1911, c. 24, § 12, p. 160; R.S.1913, § 5299; C.S.1922, § 4522; Laws 1923, c. 141, § 8, p. 352; C.S.1929, § 19-412; R.S.1943, § 19-415; Laws 1963, c. 89, § 1, p. 299; Laws 1969, c. 112, § 6, p. 523; Laws 1979, LB 80, § 45; Laws 1979, LB 281, § 4; Laws 1994, LB 76, § 514; Laws 2017, LB113, § 25. Effective date August 24, 2017.

**19-418 City council; meetings; quorum.**

The regular meetings of the city council in cities of the metropolitan class shall be held at least once in each week and upon such day and hour as the city council may designate. In all other cities having a population of two thousand or more as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the regular meetings of the city council shall be held at such intervals and upon such day and hour as the city council may by ordinance or resolution designate; and special meetings of the city council in any of such cities may be called, from time to time, by the mayor or two council members, giving notice in such manner as may be fixed or defined by law or ordinance in any of such cities or as shall be fixed by ordinance or resolution by such city council. A majority of such city council shall constitute a quorum for the transaction of any business, but it shall require a majority vote of the city council in any such city to pass any measure or transact any business.

**Source:** Laws 1911, c. 24, § 15, p. 163; R.S.1913, § 5302; C.S.1922, § 4525; C.S.1929, § 19-415; R.S.1943, § 19-418; Laws 1969, c. 257, § 18, p. 941; Laws 1979, LB 80, § 46; Laws 2017, LB113, § 26.

Effective date August 24, 2017.

**ARTICLE 5****CHARTER CONVENTION**

**(Applicable to cities over 5,000 population.)**

Section

19-501. Charter convention; charter; amendments; election.

**19-501 Charter convention; charter; amendments; election.**

Whenever, in any city having a population of more than five thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, a charter convention shall have prepared and proposed any charter for the government of such city or any amendments to the charter previously in force, it shall be the duty of the city clerk to also publish and submit, at the same time and in the same manner as in the case of the submission of such proposed charter, any additional or alternative articles or sections, to the qualified voters of such city for their approval, which shall be proposed by the petition of at least ten percent of the qualified electors of such city voting for the gubernatorial candidates at the next preceding general election. The petition must be filed within thirty days after the work of such charter convention shall have been completed.

**Source:** Laws 1913, c. 192, § 1, p. 569; R.S.1913, § 5312; C.S.1922, § 4535; C.S.1929, § 19-501; R.S.1943, § 19-501; Laws 2017, LB113, § 27.

Effective date August 24, 2017.

**ARTICLE 6**

**CITY MANAGER PLAN**

**(Applicable to cities of 1,000 population or more and less than 200,000.)**

(a) GENERAL PROVISIONS

Section

19-602. Population; how determined.

(a) GENERAL PROVISIONS

**19-602 Population; how determined.**

For the purposes of sections 19-601 to 19-648, the population of a city shall be the number of inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

**Source:** Laws 1917, c. 208, § 2, p. 498; C.S.1922, § 4539; C.S.1929, § 19-602; R.S.1943, § 19-602; Laws 2017, LB113, § 28.  
Effective date August 24, 2017.

**ARTICLE 9**

**CITY PLANNING, ZONING**

**(Applicable to cities of the first or second class and villages.)**

Section

19-926. Planning commission; members; term; removal; vacancies; alternate members.

**19-926 Planning commission; members; term; removal; vacancies; alternate members.**

(1) The planning commission shall consist of nine regular members who shall represent, insofar as is possible, the different professions or occupations in the municipality and shall be appointed by the mayor, by and with the approval of a majority vote of the members elected to the council or the village board. Two of the regular members may be residents of the area over which the municipality is authorized to exercise extraterritorial zoning and subdivision regulation. When there is a sufficient number of residents in the area over which the municipality exercises extraterritorial zoning and subdivision regulation, one regular member of the commission shall be a resident from such area. If it is determined by the city council or village board that a sufficient number of residents reside in the area subject to extraterritorial zoning or subdivision regulation, and no such resident is a regular member of the commission, the first available vacancy on the commission shall be filled by the appointment of such an individual. For purposes of this section, a sufficient number of residents shall mean: (a) For a village, two hundred residents; (b) for a city of the second class, five hundred residents; and (c) for a city of the first class, one thousand residents. A number of commissioners equal to a majority of the number of regular members appointed to the commission shall constitute a quorum for the transaction of any business. All regular members of the commission shall serve without compensation. The term of each regular member shall be three years, except that three regular members of the first commission to be so appointed shall serve for terms of one year, three for terms of two years, and three for terms of three years. All regular members shall hold office until their successors are appointed. Any member may, after a public

## TREASURER'S REPORT AND COUNCIL PROCEEDINGS; PUBLICATIONS 19-1101

hearing before the council or village board, be removed by the mayor with the consent of a majority vote of the members elected to the council or village board for inefficiency, neglect of duty or malfeasance in office, or other good and sufficient cause. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired portion of the term by the mayor.

(2) Notwithstanding the provisions of subsection (1) of this section, the planning commission for any city of the second class or village may have either five, seven, or nine regular members as the city council or village board of trustees establishes by ordinance. If a city or village planning commission has either five or seven regular members, approximately one-third of the regular members of the first commission shall serve for terms of one year, one-third for terms of two years, and one-third for terms of three years.

(3) A city of the first or second class or a village may, by ordinance, provide for the appointment of one alternate member to the planning commission who shall be chosen by the mayor with the approval of a majority vote of the elected members of the council or village board. The alternate member shall serve without compensation. The term of the alternate member shall be three years, and he or she shall hold office until his or her successor is appointed and approved. The alternate member may be removed from office in the same manner as a regular member. If the alternate member position becomes vacant other than through the expiration of the term, the vacancy shall be filled for the unexpired portion of the term by the mayor with the approval of a majority vote of the elected members of the council or village board. The alternate member may attend any meeting and may serve as a voting and participating member of the commission at any time when less than the full number of regular commission members is present and capable of voting.

(4) A regular or alternate member of the planning commission may hold any other municipal office except (a) mayor, (b) a member of the city council or village board of trustees, (c) a member of any community redevelopment authority or limited community redevelopment authority created under section 18-2102.01, or (d) a member of any citizen advisory review committee created under section 18-2715.

**Source:** Laws 1937, c. 39, § 3, p. 176; C.S.Supp.,1941, § 18-2103; R.S. 1943, § 18-1303; Laws 1975, LB 410, § 9; Laws 1978, LB 186, § 3; R.S.1943, (1983), § 18-1303; Laws 1988, LB 934, § 6; Laws 1995, LB 193, § 1; Laws 2017, LB383, § 3.  
Effective date August 24, 2017.

## ARTICLE 11

### TREASURER'S REPORT AND COUNCIL PROCEEDINGS; PUBLICATION

#### Section

19-1101. City or village treasurer; report for fiscal year; publication.

19-1102. City or village clerk; proceedings of council; publication; contents.

#### **19-1101 City or village treasurer; report for fiscal year; publication.**

The treasurer of each city or village that has a population of not more than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall prepare and publish annually within sixty days after the close of its municipal fiscal year a statement of the receipts and expendi-

tures of funds of the city or village for the preceding fiscal year. The statement shall also include the information required by subsection (3) of section 16-318 or subsection (2) of section 17-606. Not more than the legal rate provided for in section 33-141 shall be charged and paid for such publication.

**Source:** Laws 1919, c. 183, § 2, p. 410; C.S.1922, § 4377; C.S.1929, § 17-575; R.S.1943, § 19-1101; Laws 1959, c. 66, § 1, p. 292; Laws 1992, LB 415, § 2; Laws 2013, LB112, § 5; Laws 2017, LB113, § 29.  
Effective date August 24, 2017.

**Cross References**

City of the first class, receipts and expenditures, publication requirements, see section 16-722.

**19-1102 City or village clerk; proceedings of council; publication; contents.**

It shall be the duty of each village or city clerk in every village or city having a population of not more than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census to prepare and publish the official proceedings of the village or city board, council, or commission within thirty days after any meeting of the board, council, or commission. The publication shall be in a newspaper in or of general circulation in the village or city, shall set forth a statement of the proceedings of the meeting, and shall also include the amount of each claim allowed, the purpose of the claim, and the name of the claimant, except that the aggregate amount of all payroll claims may be included as one item. Between July 15 and August 15 of each year, the employee job titles and the current annual, monthly, or hourly salaries corresponding to such job titles shall be published. Each job title published shall be descriptive and indicative of the duties and functions of the position. The charge for the publication shall not exceed the rates provided for in section 23-122.

**Source:** Laws 1919, c. 183, § 1, p. 410; C.S.1922, § 4376; C.S.1929, § 17-574; R.S.1943, § 19-1102; Laws 1975, LB 193, § 1; Laws 1992, LB 415, § 3; Laws 2017, LB113, § 30.  
Effective date August 24, 2017.

**ARTICLE 18**

**CIVIL SERVICE ACT**

Section

19-1827. Civil service commission; applicability; members; appointment; compensation; term; removal; appeal; quorum.

**19-1827 Civil service commission; applicability; members; appointment; compensation; term; removal; appeal; quorum.**

(1) There is hereby created, in cities in the State of Nebraska having a population of more than five thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census and having full-time police officers or full-time firefighters, a civil service commission, except in cities with a population in excess of forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States

Bureau of the Census which have or may adopt a home rule charter pursuant to sections 2 to 5 of Article XI of the Constitution of this state. Any city or village having a population of five thousand inhabitants or less as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census may adopt the Civil Service Act and create a civil service commission by a vote of the electors of such city or village. If any city of the first class which established a civil service commission decreases in population to less than five thousand, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, and continues to have full-time police officers or full-time firefighters, the civil service commission shall be continued for at least four years, and thereafter continued at the option of the governing body of such city or village. The members of such commission shall be appointed by the appointing authority.

(2) The governing body shall by ordinance determine if the commission shall be comprised of three or five members. The members of the civil service commission shall serve without compensation. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such municipality for at least three years immediately preceding such appointment, and an elector of the county wherein such person resides. If the commission is comprised of three members, the term of office of such commissioners shall be six years, except that the first three members of such commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. If the commission is comprised of five members, the term of office of such members shall be for five years, except that the first members of such commission shall be appointed for different terms, as follows: One to serve for a period of one year, one to serve for a period of two years, one to serve for a period of three years, one to serve for a period of four years, and one to serve for a period of five years. If the municipality determines by ordinance to change from a three-member commission to a five-member commission, or from a five-member commission to a three-member commission, the members of the commission serving before the effective date of such ordinance shall hold office until reappointed or their successors are appointed.

(3) Any member of the civil service commission may be removed from office for incompetency, dereliction of duty, malfeasance in office, or other good cause by the appointing authority, except that no member of the commission shall be removed until written charges have been preferred, due notice given such member, and a full hearing had before the appointing authority. Any member so removed shall have the right to appeal to the district court of the county in which such commission is located, which court shall hear and determine such appeal in a summary manner. Such an appeal shall be only upon the ground that such judgment or order of removal was not made in good faith for cause, and the hearing on such appeal shall be confined to the determination of whether or not it was so made.

(4) The members of the civil service commission shall devote due time and attention to the performance of the duties specified and imposed upon them by the Civil Service Act. Two commissioners in a three-member commission and three commissioners in a five-member commission shall constitute a quorum for the transaction of business. Confirmation of the appointment or appointments of commissioners, made under subsection (1) of this section, by any

other legislative body shall not be required. At the time of any appointment, not more than two commissioners of a three-member commission, or three commissioners of a five-member commission, including the one or ones to be appointed, shall be registered electors of the same political party.

**Source:** Laws 1943, c. 29, § 1, p. 125; R.S.1943, § 19-1801; Laws 1957, c. 48, § 1, p. 228; Laws 1963, c. 89, § 5, p. 304; Laws 1983, LB 291, § 1; R.S.1943, (1983), § 19-1801; Laws 1985, LB 372, § 6; Laws 2017, LB113, § 31.  
Effective date August 24, 2017.

### ARTICLE 35

#### PENSION PLANS

(Applicable to cities of the first or second class and villages.)

##### Section

19-3501. Pension plans authorized; employees covered; contributions; funding past service benefits; joinder in plan by two or more cities; reports.

**19-3501 Pension plans authorized; employees covered; contributions; funding past service benefits; joinder in plan by two or more cities; reports.**

(1) The governing body of cities of the first and second classes and villages may, by appropriate ordinance or proper resolution, establish a pension plan designed and intended for the benefit of the regularly employed or appointed full-time employees of the city or village. Any recognized method of funding a pension plan may be employed. The plan shall be established by appropriate ordinance or proper resolution, which may provide for mandatory contribution by the employee. The city or village may also contribute, in addition to any amounts contributed by the employee, amounts to be used for the purpose of funding employee past service benefits. Any two or more cities of the first and second classes and villages may jointly establish such a pension plan by adoption of appropriate ordinances or resolutions. Such a pension plan may be integrated with old age and survivors insurance, otherwise generally known as social security.

(2) Beginning December 31, 1998, through December 31, 2017:

(a) The clerk of a city or village with a retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board an annual report on such plan and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;



(vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the city or village clerk may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits; and

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the city council or village board shall cause to be prepared an annual report and shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of each report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the city council or village board does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the city or village. All costs of the audit shall be paid by the city or village. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

(3) Subsection (1) of this section shall not apply to firefighters or police officers who are included under an existing pension or retirement system established by the municipality employing such firefighters or police officers or the Legislature. If a city of the first class decreases in population to less than five thousand, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, any police officer or firefighter employed by such city on or prior to the date such city becomes a city of the second class shall retain the level of benefits established by the Legislature for police officers or firefighters employed by a city of the first class on the date such city becomes a city of the second class.

**Source:** Laws 1957, c. 26, § 1, p. 180; Laws 1963, c. 63, § 10, p. 262; Laws 1967, c. 98, § 1, p. 297; R.S.Supp., 1967, § 16-328; Laws 1969, c. 79, § 1, p. 410; Laws 1974, LB 1002, § 1; Laws 1983, LB 291, § 2; Laws 1989, LB 145, § 1; Laws 1998, LB 1191, § 21; Laws 1999, LB 795, § 9; Laws 2011, LB474, § 9; Laws 2014, LB759, § 14; Laws 2017, LB113, § 32; Laws 2017, LB415, § 9.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB113, section 32, with LB415, section 9, to reflect all amendments.

**Note:** Changes made by LB415 became effective May 24, 2017. Changes made by LB113 became effective August 24, 2017.

## ARTICLE 40

## BUSINESS IMPROVEMENT DISTRICTS

(Applicable to all cities.)

## Section

- 19-4030. Business improvement district; special assessment; purpose; notice; appeal; lien; area within riverfront development district; how treated.
- 19-4031. District; general business occupation tax; purpose; exceptions; notice; appeal; collection; basis; area within riverfront development district; how treated.

**19-4030 Business improvement district; special assessment; purpose; notice; appeal; lien; area within riverfront development district; how treated.**

A city may levy a special assessment against the real estate located in a business improvement district, to the extent of the special benefit thereto, for the purpose of paying all or any part of the total costs and expenses of performing any authorized work, except maintenance, repair, and reconstruction costs, within such district. The amount of each special assessment shall be determined by the city council sitting as a board of equalization. Assessments shall be levied in accordance with the method of assessment proposed in the ordinance creating the district. If the city council finds that the proposed method of assessment does not provide a fair and equitable method of apportioning costs, then it may assess the costs under such method as the city council finds to be fair and equitable. Notice of a hearing on any special assessments to be levied under the Business Improvement District Act shall be given to the landowners in such district by publication of the description of the land, the amount proposed to be assessed, and the general purpose for which such assessment is to be made one time each week for three weeks in a daily or weekly newspaper of general circulation published in the city. The notice shall provide the date, time, and place of hearing to hear any objections or protests by landowners in the district as to the amount of assessment made against their land. A direct appeal to the district court of the county in which such city is located may be taken from the decision of the city council in the same manner and under like terms and conditions as appeals may be taken from the amount of special assessments levied in street improvement districts in such city as now provided by law. All special assessments levied under the act shall be liens on the property and shall be certified for collection and collected in the same manner as special assessments for improvements and street improvement districts of the city are collected. If any part of a business improvement district overlaps with a riverfront development district in which a special assessment is already being levied pursuant to section 19-5313, the city creating the business improvement district shall not impose the business improvement district's special assessment within the overlapping area.

**Source:** Laws 1979, LB 251, § 16; Laws 1983, LB 22, § 10; Laws 2015, LB168, § 16; Laws 2017, LB97, § 18.  
Effective date August 24, 2017.

**19-4031 District; general business occupation tax; purpose; exceptions; notice; appeal; collection; basis; area within riverfront development district; how treated.**

(1) In addition to or in place of the special assessments authorized by the Business Improvement District Act, a city may levy a general business occupa-

tion tax upon the businesses and users of space within a district established for acquiring, constructing, maintaining or operating public offstreet parking facilities and providing in connection therewith other public improvements and facilities authorized by the Business Improvement District Act, for the purpose of paying all or any part of the total cost and expenses of any authorized improvement or facility within such district. Notice of a hearing on any such tax levied under the Business Improvement District Act shall be given to the businesses and users of space of such districts, and appeals may be taken, all in the manner provided in section 19-4030.

(2) After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The collection of a tax imposed pursuant to this section shall be made and enforced in such a manner as the city council shall by ordinance determine to produce the required revenue. The city council may provide that failure to pay the tax imposed pursuant to this section shall constitute a violation of the ordinance and subject the violator to a fine or other punishment as provided by ordinance.

(3) If any part of a business improvement district overlaps with a riverfront development district in which a general business occupation tax is already being levied pursuant to section 19-5312, the city creating the business improvement district shall not impose the business improvement district's occupation tax within the overlapping area.

**Source:** Laws 1979, LB 251, § 17; Laws 1983, LB 22, § 11; Laws 2014, LB474, § 9; Laws 2017, LB97, § 19.  
Effective date August 24, 2017.

## ARTICLE 51

### INVESTMENT OF PUBLIC ENDOWMENT FUNDS (Applicable to cities of more than 5,000 population.)

Section

19-5101. Investment of public endowment funds; manner.

#### **19-5101 Investment of public endowment funds; manner.**

Pursuant to Article XI, section 1, of the Constitution of Nebraska, the Legislature authorizes the investment of public endowment funds by any city having a population of more than five thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census in the manner required of a prudent investor who shall act with care, skill, and diligence under the prevailing circumstance and in such investments as the governing body of such city, acting in a fiduciary capacity for the exclusive purpose of protecting and benefiting such investment, may determine.

**Source:** Laws 2009, LB402, § 3; Laws 2017, LB113, § 33.  
Effective date August 24, 2017.

**ARTICLE 53**

**RIVERFRONT DEVELOPMENT DISTRICT ACT**

Section

- 19-5301. Act, how cited.
- 19-5302. Legislative findings and declarations.
- 19-5303. Terms, defined.
- 19-5304. Riverfront development district; ordinance; contents; revenue; boundaries.
- 19-5305. Riverfront development authority; members; officers; vacancy; meetings; powers.
- 19-5306. Authority; powers; city; power.
- 19-5307. Authority; acquire property; limitations.
- 19-5308. Taxation.
- 19-5309. Conflict of interest.
- 19-5310. Funding.
- 19-5311. Bonds; issuance; procedure; liability.
- 19-5312. Business occupation tax; hearing; appeals; collection; area within business improvement district; how treated.
- 19-5313. Special assessment; hearing; appeals; lien; area within business improvement district; how treated.
- 19-5314. Hearing; notice; manner; decision; appeal.
- 19-5315. Additional assessment or levy; procedure.
- 19-5316. Records; meetings; reports.
- 19-5317. Dissolution of district; procedure; notice.

**19-5301 Act, how cited.**

Sections 19-5301 to 19-5317 shall be known and may be cited as the Riverfront Development District Act.

**Source:** Laws 2017, LB97, § 1.  
Effective date August 24, 2017.

**19-5302 Legislative findings and declarations.**

The Legislature finds and declares as follows:

- (1) Cities in the United States and throughout the world have been historically established along the banks of major rivers due to the role rivers played as early trade routes as well as other inherent strategic and economic benefits;
- (2) As national, state, and local economies have changed over time, many cities have moved away from their historic riverfronts, resulting in abandonment and blight in many city cores;
- (3) Many cities in this state that were established along the banks of Nebraska’s rivers have grown away from their riverfronts, and these cities have riverfront areas in need of improvement and development but lack the tools and funding necessary to improve and develop such areas; and
- (4) The purpose of the Riverfront Development District Act is to provide a means by which cities in this state may effectively fund, manage, promote, and develop riverfronts within their corporate limits.

**Source:** Laws 2017, LB97, § 2.  
Effective date August 24, 2017.

**19-5303 Terms, defined.**

For purposes of the Riverfront Development District Act:

- (1) Authority means a riverfront development authority established in accordance with section 19-5305;
- (2) City means a city of the metropolitan, primary, first, or second class;
- (3) District means a riverfront development district established in accordance with section 19-5304; and
- (4) River means the Missouri River, Platte River, North Platte River, South Platte River, Republican River, Niobrara River, Loup River, North Loup River, Middle Loup River, South Loup River, Elkhorn River, North Fork of the Elkhorn River, or Big Blue River.

**Source:** Laws 2017, LB97, § 3.

Effective date August 24, 2017.

**19-5304 Riverfront development district; ordinance; contents; revenue; boundaries.**

- (1) A city may create a riverfront development district by the adoption of an ordinance which specifies the following:
  - (a) The name of the river or rivers along which the district will be created;
  - (b) The boundaries of the district, a map of which shall be incorporated by reference in the ordinance;
  - (c) The qualifications and terms of office of members of the authority;
  - (d) A statement that the businesses and users of space in the district shall be subject to the general business occupation tax authorized by the Riverfront Development District Act or that the real property in the district shall be subject to the special assessment authorized by the act;
  - (e) The proposed method of assessment to be imposed within the district or the initial rate of the occupation tax to be imposed;
  - (f) Any penalties to be imposed for failure to pay the occupation tax or special assessment; and
  - (g) The maximum amount of bonds that may be issued by the authority pursuant to section 19-5311.

(2) The ordinance shall recite that the method of raising revenue shall be fair and equitable. In the use of a general business occupation tax, the tax shall be based primarily on the square footage of the owner's and user's place of business. In the use of a special assessment, the assessment shall be based upon the special benefit to the property within the district.

(3) The boundaries of any district created under this section shall be wholly contained within the corporate limits of the city and shall not extend more than one-half mile from the edge of the river or rivers along which the district is created.

**Source:** Laws 2017, LB97, § 4.

Effective date August 24, 2017.

**19-5305 Riverfront development authority; members; officers; vacancy; meetings; powers.**

- (1) Following the creation of a district under section 19-5304, the mayor, with the approval of the city council, shall appoint a riverfront development authority to oversee and manage the district. The authority shall consist of five

or more members who collectively shall have skills, expertise, and knowledge in residential, commercial, and mixed-use real estate development, financing, law, asset management, economic and community development, and tourism promotion.

(2) The members of the authority shall select annually from among themselves a chairperson, a vice-chairperson, a treasurer, and such other officers as the authority may determine.

(3) A public official or public employee shall be eligible to be a member of the authority.

(4) A vacancy on the authority shall be filled in the same manner as the original appointment.

(5) Members of the authority shall serve without compensation.

(6) The authority shall meet in regular session according to a schedule adopted by the authority and shall also meet in special session as convened by the chairperson or upon written notice signed by a majority of the members.

(7) Two or more cities which have a contiguous riverfront along the same river may enter into an agreement pursuant to the Interlocal Cooperation Act to create a single authority to jointly oversee and manage the districts created in such cities. An agreement entered into under this subsection shall contain the information required by section 19-5304.

(8) An authority which oversees and manages a district bordering another state may enter into an agreement pursuant to the Interlocal Cooperation Act with a political subdivision, public agency, or quasi-public agency in such other state to jointly oversee and manage the district and any similar district or districts in such other state.

(9) Each authority created pursuant to the Riverfront Development District Act shall be deemed to be a public corporation acting in a governmental capacity and a political subdivision of the state and shall have permanent and perpetual duration until terminated and dissolved in accordance with section 19-5317.

**Source:** Laws 2017, LB97, § 5.

Effective date August 24, 2017.

**Cross References**

**Interlocal Cooperation Act**, see section 13-801.

**19-5306 Authority; powers; city; power.**

(1) Except as provided in subsection (2) of this section, an authority shall have the following powers:

(a) To adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business;

(b) To sue and be sued in its own name and plead and be impleaded in all civil actions;

(c) To procure insurance or guarantees from the state or federal government of the payments of any debts or parts thereof incurred by the authority and to pay premiums in connection therewith;

(d) To invest money of the authority in instruments, obligations, securities, or property determined proper by the authority and name and use depositories for its money;

(e) To enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers, including, but not limited to, agreements under the Interlocal Cooperation Act for the joint exercise of powers under the Riverfront Development District Act;

(f) To create and implement plans for improvements and redevelopment within the boundaries of the district in conjunction with the city or other public or private entities;

(g) To develop, manage, and coordinate public activities and events taking place within the boundaries of the district;

(h) To acquire, construct, maintain, and operate public offstreet parking facilities for the benefit of the district;

(i) To improve any public place or facility within the boundaries of the district, including landscaping, physical improvements for decoration or security purposes, and plantings;

(j) To construct or install 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, pedestrian and vehicular overpasses and underpasses, and any other useful or necessary public improvements within the boundaries of the district;

(k) To construct, install, and maintain boardwalks, barges, docks, and wharves;

(l) To lease, acquire, construct, reconstruct, extend, maintain, or repair parking lots or parking garages, both above and below ground, or other facilities for the parking of vehicles within the boundaries of the district;

(m) To maintain, repair, and reconstruct any improvements or facilities authorized in the Riverfront Development District Act;

(n) To enforce parking regulations and the provision of security within the boundaries of the district;

(o) To employ such agents and employees, permanent or temporary, as necessary;

(p) To fix, charge, and collect fees and charges for services provided by the authority;

(q) To fix, charge, and collect rents and leasehold payments for the use of real property of the authority;

(r) To grant or acquire a license, easement, lease, as lessor or as lessee, or option with respect to real property of the authority;

(s) To make recommendations to the city as to the use of any occupation tax funds collected under section 19-5312 or any special assessment funds collected under section 19-5313;

(t) To administer the use of occupation tax funds or special assessment funds if directed by the mayor and city council; and

(u) To do all other things necessary or convenient to achieve the objectives and purposes of the authority.

(2) The city creating an authority may, by ordinance, limit the powers that may be exercised by such authority.

**Source:** Laws 2017, LB97, § 6.  
Effective date August 24, 2017.

**Cross References**

**Interlocal Cooperation Act**, see section 13-801.

**19-5307 Authority; acquire property; limitations.**

(1) An authority may acquire real property or interests in real property by gift, devise, transfer, exchange, foreclosure, purchase, or otherwise on terms and conditions and in a manner the authority considers proper.

(2) An authority may accept transfers of real property or interests in real property from political subdivisions upon such terms and conditions as agreed to by the authority and the political subdivision.

(3) An authority may convey, exchange, sell, transfer, grant, release and demise, pledge, and hypothecate any and all interests in, upon, or to real property of the authority.

(4) An authority shall hold all property acquired in its own name and shall maintain all of its real property in accordance with the laws and ordinances of the jurisdiction in which the real property is located.

(5) An authority shall not own or hold real property located outside the boundaries of the district which it oversees and manages.

(6) An authority shall not rent or lease any of its real property for residential use.

**Source:** Laws 2017, LB97, § 7.  
Effective date August 24, 2017.

**19-5308 Taxation.**

The real property owned by an authority and the authority's income and operations are exempt from all taxation by the state or any political subdivision thereof, except that purchases by an authority shall be subject to state and local sales and use taxes.

**Source:** Laws 2017, LB97, § 8.  
Effective date August 24, 2017.

**19-5309 Conflict of interest.**

(1) No member of an authority or employee of an authority shall acquire any interest, direct or indirect, in real property located within the boundaries of any district overseen and managed by the authority.

(2) No member of an authority or employee of an authority shall have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by the authority.

**Source:** Laws 2017, LB97, § 9.  
Effective date August 24, 2017.

**19-5310 Funding.**



An authority may receive funding through grants and loans from the city that created the authority, from other municipalities, from the state, from the federal government, and from other public and private sources.

**Source:** Laws 2017, LB97, § 10.

Effective date August 24, 2017.

**19-5311 Bonds; issuance; procedure; liability.**

(1) An authority shall have the power to issue bonds for any of its corporate purposes, the principal and interest of which are payable from its revenue generally. Any of such bonds shall be secured by a pledge of any revenue of the authority or by a mortgage of any property owned by the authority.

(2) The bonds issued by an authority are hereby declared to have all the qualities of negotiable instruments under the Uniform Commercial Code.

(3) The bonds of an authority and the income therefrom shall at all times be exempt from all taxes imposed by the state or any political subdivision thereof.

(4) Bonds issued by an authority shall be authorized by resolution of the authority and shall be limited obligations of the authority. The principal and interest, costs of issuance, and other costs incidental thereto shall be payable by any revenue of the authority or by the disposition of any assets of the authority. Any refunding bonds issued shall be payable from any source described in this subsection or from the investment of any of the proceeds of the refunding bonds and shall not constitute an indebtedness or pledge of the general credit of any city within the meaning of any constitutional or statutory limitation of indebtedness and shall contain a recital to that effect. Bonds of the authority shall be issued in such form, shall be in such denominations, shall bear interest, shall mature in such manner, and shall be executed by one or more members of the authority as provided in the resolution authorizing the issuance thereof. Such bonds may be subject to redemption at the option of and in the manner determined by the authority in the resolution authorizing the issuance thereof.

(5) Bonds issued by the authority shall be issued, sold, and delivered in accordance with the terms and provisions of a resolution adopted by the authority. The authority may sell such bonds in such manner, either at public or private sale, and for such price as it may determine to be in the best interests of the authority. The resolution authorizing the issuance of bonds shall be published in a newspaper in or of general circulation within the city that created the authority.

(6) Neither the members of the authority nor any person executing the bonds shall be liable personally on any such bonds by reason of the issuance thereof. Such bonds or other obligations of an authority shall not be a debt of any city and shall so state on their face, and no city nor any revenue or any property of any city shall be liable for such bonds or other obligations except as provided in the Riverfront Development District Act.

**Source:** Laws 2017, LB97, § 11.

Effective date August 24, 2017.

**19-5312 Business occupation tax; hearing; appeals; collection; area within business improvement district; how treated.**

(1) A city may levy a general business occupation tax upon the businesses and users of space within a district for the purpose of paying all or any part of the

total costs and expenses of such district. Notice of a hearing on any such tax levied under the Riverfront Development District Act shall be given to the businesses and users of space of such district, and appeals may be taken, in the manner provided in section 19-5314.

(2) Any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The collection of a tax imposed pursuant to this section shall be made and enforced in such manner as the city council shall by ordinance determine to produce the required revenue. The city council may provide that failure to pay the tax imposed pursuant to this section shall constitute a violation of the ordinance and subject the violator to a fine or other punishment as provided by ordinance.

(3) If any part of a riverfront development district overlaps with a business improvement district in which a general business occupation tax is already being levied pursuant to section 19-4031, the city creating the riverfront development district shall not impose the riverfront development district's occupation tax within the overlapping area.

**Source:** Laws 2017, LB97, § 12.

Effective date August 24, 2017.

**19-5313 Special assessment; hearing; appeals; lien; area within business improvement district; how treated.**

(1) A city may levy a special assessment against the real estate located in a district, to the extent of the special benefit thereto, for the purpose of paying all or any part of the total costs and expenses of such district. The amount of each special assessment shall be determined by the city council sitting as a board of equalization. Assessments shall be levied in accordance with the method of assessment proposed in the ordinance creating the district. If the city council finds that the proposed method of assessment does not provide a fair and equitable method of apportioning costs, then it may assess the costs under such method as the city council finds to be fair and equitable. Notice of a hearing on any such tax levied under the Riverfront Development District Act shall be given to the landowners in such district, and appeals may be taken, in the manner provided in section 19-5314.

(2) All special assessments levied under the act shall be liens on the property and shall be certified for collection and collected in the same manner that special assessments for improvements in street improvement districts of the city are collected.

(3) If any part of a riverfront development district overlaps with a business improvement district in which a special assessment is already being levied pursuant to section 19-4030, the city creating the riverfront development district shall not impose the riverfront development district's special assessment within the overlapping area.

**Source:** Laws 2017, LB97, § 13.

Effective date August 24, 2017.

**19-5314 Hearing; notice; manner; decision; appeal.**

(1) Notice of a hearing on any general business occupation tax to be levied under the Riverfront Development District Act shall be given to the businesses and users of space in such district by publication of a description of the businesses and users of space who will be subject to the occupation tax, the amount of the occupation tax proposed to be levied, and the general purpose for which such occupation tax is to be levied one time each week for three weeks in a newspaper in or of general circulation in the city.

(2) Notice of a hearing on any special assessments to be levied under the act shall be given to the landowners in such district by publication of the description of the land, the amount proposed to be assessed, and the general purpose for which such assessment is to be made one time each week for three weeks in a newspaper in or of general circulation in the city.

(3) Notice under this section shall provide the date, time, and place of hearing to hear any objections or protests by landowners in the district as to the amount of assessment made against their land or by businesses and users of space in the district as to the amount of occupation tax to be levied against them. A direct appeal to the district court of the county in which such city is located may be taken from the decision of the city council in the same manner and under like terms and conditions as appeals may be taken from the amount of special assessments levied in street improvement districts in such city as now provided by law.

**Source:** Laws 2017, LB97, § 14.

Effective date August 24, 2017.

#### **19-5315 Additional assessment or levy; procedure.**

If, subsequent to the levy of taxes or assessments, the use of any parcel of land shall change so that, had the new use existed at the time of making such levy, the assessment or levy on such parcel would have been higher than the levy or assessment actually made, an additional assessment or levy may be made on such parcel by the city council taking into consideration the new and changed use of the property. Reassessments or changes in the rate of levy of assessments or taxes may be made by the city council after notice and hearing as provided in section 19-5314. The city council shall adopt a resolution of intention to change the rate of levy at least fifteen days prior to the hearing required for changes. The resolution shall specify the proposed change and shall give the time and place of the hearing. The levy of any additional assessment or tax shall not reduce or affect in any manner the assessments previously levied.

**Source:** Laws 2017, LB97, § 15.

Effective date August 24, 2017.

#### **19-5316 Records; meetings; reports.**

(1) The authority shall cause minutes and a record to be kept of all its proceedings. Meetings of the authority shall be subject to the Open Meetings Act.

(2) All of an authority's records and documents shall be considered public records for purposes of sections 84-712 to 84-712.09.

(3) The authority shall provide quarterly reports to the city that created the authority on the authority's activities pursuant to the Riverfront Development

District Act. The authority shall also provide an annual report to the city that created the authority and to the Urban Affairs Committee of the Legislature by January 31 of each year summarizing the authority's activities for the prior calendar year. The report submitted to the committee shall be submitted electronically.

**Source:** Laws 2017, LB97, § 16.  
Effective date August 24, 2017.

**Cross References**

**Open Meetings Act**, see section 84-1407.

**19-5317 Dissolution of district; procedure; notice.**

(1) A district or an authority may be dissolved sixty calendar days after a resolution of dissolution is approved by the city council of the city that created the district or authority. Notice of consideration of a resolution of dissolution shall be given by publishing such notice in a newspaper in or of general circulation within the city that created the district or authority. Such notice shall also be sent by certified mail to the trustee of any outstanding bonds of the authority.

(2) Upon dissolution of an authority, all real property, personal property, and other assets of the authority shall become the assets of the city that created the authority.

(3) Upon dissolution of a district, any proceeds of the occupation tax or the special assessment relating to such district shall be subject to disposition as the city council shall determine.

**Source:** Laws 2017, LB97, § 17.  
Effective date August 24, 2017.

## CHAPTER 20

### CIVIL RIGHTS

Article.

1. Individual Rights.
  - (k) Mother Breast-Feed Child. 20-170.

#### ARTICLE 1

#### INDIVIDUAL RIGHTS

##### (k) MOTHER BREAST-FEED CHILD

Section

- 20-170. Mother; right to breast-feed child; school; provide facilities or accommodation for milk expression and storage.

##### (k) MOTHER BREAST-FEED CHILD

**20-170 Mother; right to breast-feed child; school; provide facilities or accommodation for milk expression and storage.**

Notwithstanding any other provision of law, a mother may breast-feed her child in any public or private location where the mother is otherwise authorized to be, including, but not limited to, a mother who is attending a public, private, denominational, or parochial day school which meets the requirements for legal operation prescribed in Chapter 79. For a mother who is attending a public, private, denominational, or parochial day school which meets the requirement for legal operation prescribed in Chapter 79, the school shall also provide for private or appropriate facilities or accommodation for milk expression and storage. Nothing in this section limits the authority of administrative and teaching personnel to regulate student behavior as provided by section 79-258 or the authority of a private, denominational, or parochial school to regulate student behavior in order to further school purposes or to prevent interference with the educational process.

**Source:** Laws 2011, LB197, § 1; Laws 2017, LB427, § 5.  
Effective date August 24, 2017.



**CHAPTER 21**  
**CORPORATIONS AND OTHER COMPANIES**

Article.

- 2. Nebraska Model Business Corporation Act.
  - Part 1—General Provisions.
    - Subpart 1—Short Title and Reservation of Power. 21-201.
    - Subpart 4—Definitions. 21-214, 21-217.
  - Part 2—Incorporation. 21-220.
  - Part 7—Shareholders.
    - Subpart 1—Meetings. 21-254, 21-255.
    - Subpart 2—Voting. 21-264 to 21-271.01.
    - Subpart 4—Derivative Proceedings. 21-275.
    - Subpart 5—Proceeding to Appoint Custodian or Receiver. 21-283.
  - Part 8—Directors and Officers.
    - Subpart 1—Board of Directors. 21-285.
    - Subpart 3—Directors. 21-2,103.
    - Subpart 5—Indemnification and Advance for Expenses. 21-2,113, 21-2,114.
    - Subpart 6—Directors’ Conflicting Interest Transactions. 21-2,120, 21-2,123.
    - Subpart 7—Business Opportunities. 21-2,124.
  - Part 9—Domestication and Conversion.
    - Subpart 2—Domestication. 21-2,129, 21-2,130.
    - Subpart 3—Nonprofit Conversion. 21-2,135.
    - Subpart 4—Foreign Nonprofit Domestication and Conversion. 21-2,140.
    - Subpart 5—Entity Conversion. 21-2,146.
  - Part 13—Appraisal Rights.
    - Subpart 1—Right to Appraisal and Payment for Shares. 21-2,171 to 21-2,173.
  - Part 14—Dissolution.
    - Subpart 3—Judicial Dissolution. 21-2,197, 21-2,201.
  - Part 16—Records and Reports.
    - Subpart 1—Records. 21-2,222.
- 17. Credit Unions.
  - (a) Credit Union Act. 21-1701 to 21-17,116.
- 19. Nebraska Nonprofit Corporation Act.
  - (n) Foreign Corporations. 21-19,163.

**ARTICLE 2**

**NEBRASKA MODEL BUSINESS CORPORATION ACT**

**PART 1—GENERAL PROVISIONS**

**SUBPART 1—SHORT TITLE AND RESERVATION OF POWER**

Section  
21-201. Short title.

**SUBPART 4—DEFINITIONS**

21-214. Act definitions.  
21-217. Qualified director.

**PART 2—INCORPORATION**

21-220. Articles of incorporation.

**CORPORATIONS AND OTHER COMPANIES**

Section

**PART 7—SHAREHOLDERS**

**SUBPART 1—MEETINGS**

- 21-254. Special meeting.
- 21-255. Court-ordered meeting.

**SUBPART 2—VOTING**

- 21-264. Proxies.
- 21-265. Shares held by intermediaries and nominees.
- 21-266. Corporation's acceptance of votes.
- 21-271. Inspectors of election.
- 21-271.01. Judicial review of corporate elections, shareholder votes, and other corporate governance disputes.

**SUBPART 4—DERIVATIVE PROCEEDINGS**

- 21-275. Subpart definitions.

**SUBPART 5—PROCEEDING TO APPOINT CUSTODIAN OR RECEIVER**

- 21-283. Shareholder action to appoint custodian or receiver.

**PART 8—DIRECTORS AND OFFICERS**

**SUBPART 1—BOARD OF DIRECTORS**

- 21-285. Qualifications of directors.

**SUBPART 3—DIRECTORS**

- 21-2,103. Standards of liability for directors.

**SUBPART 5—INDEMNIFICATION AND ADVANCE FOR EXPENSES**

- 21-2,113. Advance for expenses.
- 21-2,114. Court-ordered indemnification and advance for expenses.

**SUBPART 6—DIRECTORS' CONFLICTING INTEREST TRANSACTIONS**

- 21-2,120. Subpart definitions.
- 21-2,123. Shareholders' action.

**SUBPART 7—BUSINESS OPPORTUNITIES**

- 21-2,124. Business opportunities.

**PART 9—DOMESTICATION AND CONVERSION**

**SUBPART 2—DOMESTICATION**

- 21-2,129. Articles of domestication.
- 21-2,130. Surrender of charter upon domestication.

**SUBPART 3—NONPROFIT CONVERSION**

- 21-2,135. Articles of nonprofit conversion.

**SUBPART 4—FOREIGN NONPROFIT DOMESTICATION AND CONVERSION**

- 21-2,140. Articles of domestication and conversion.

**SUBPART 5—ENTITY CONVERSION**

- 21-2,146. Articles of entity conversion.

**PART 13—APPRAISAL RIGHTS**

**SUBPART 1—RIGHT TO APPRAISAL AND PAYMENT FOR SHARES**

- 21-2,171. Definitions.
- 21-2,172. Right to appraisal.
- 21-2,173. Assertion of rights by nominees and beneficial owners.

**PART 14—DISSOLUTION**

**SUBPART 3—JUDICIAL DISSOLUTION**

- 21-2,197. Grounds for judicial dissolution.
- 21-2,201. Election to purchase in lieu of dissolution.



Section

PART 16—RECORDS AND REPORTS

SUBPART 1—RECORDS

21-2,222. Inspection of records by shareholders.

PART 1—GENERAL PROVISIONS

SUBPART 1—SHORT TITLE AND RESERVATION OF POWER

**21-201 Short title.**

(MBCA 1.01) Sections 21-201 to 21-2,232 shall be known and may be cited as the Nebraska Model Business Corporation Act.

**Source:** Laws 2014, LB749, § 1; Laws 2016, LB794, § 1; Laws 2017, LB35, § 1.

Operative date January 1, 2018.

SUBPART 4—DEFINITIONS

**21-214 Act definitions.**

(MBCA 1.40) In the Nebraska Model Business Corporation Act:

(1) Articles of incorporation means the original articles of incorporation, all amendments thereof, and any other documents permitted or required to be filed by a domestic business corporation with the Secretary of State under any provision of the act except section 21-2,228. If an amendment of the articles or any other document filed under the act restates the articles in their entirety, thenceforth the articles shall not include any prior documents.

(2) Authorized shares means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) Beneficial shareholder means a person who owns the beneficial interest in shares, which may be a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

(4) Conspicuous means so written, displayed, or presented that a reasonable person against whom the writing is to operate should have noticed it. For example, text in italics, boldface, contrasting color, capitals, or underlined, is conspicuous.

(5) Corporation, domestic corporation, or domestic business corporation means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of the act.

(6) Deliver or delivery means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in accordance with section 21-215, by electronic transmission.

(7) Distribution means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(8) Document means (i) any tangible medium on which information is inscribed, and includes any writing or written instrument, or (ii) an electronic record.

(9) Domestic unincorporated entity means an unincorporated entity whose internal affairs are governed by the laws of this state.

(10) Effective date of notice is defined in section 21-215.

(11) Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(12) Electronic record means information that is stored in an electronic or other medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subsection (k) of section 21-215.

(13) Electronic transmission or electronically transmitted means any form or process of communication not directly involving the physical transfer of paper or another tangible medium, which (i) is suitable for the retention, retrieval, and reproduction of information by the recipient and (ii) is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subsection (k) of section 21-215.

(14) Eligible entity means a domestic or foreign unincorporated entity or a domestic or foreign nonprofit corporation.

(15) Eligible interests means interests or memberships.

(16) Employee includes an officer but not a director. A director may accept duties that make the director also an employee.

(17) Entity includes domestic and foreign business corporation; domestic and foreign nonprofit corporation; limited liability company; estate; trust; domestic and foreign unincorporated entity; and state, United States, and foreign government.

(18) The phrase facts objectively ascertainable outside of a filed document or plan is defined in subsection (k) of section 21-203.

(19) Expenses means reasonable expenses of any kind that are incurred in connection with a matter.

(20) Filing entity means an unincorporated entity that is of a type that is created by filing a public organic document.

(21) Foreign corporation means a corporation incorporated under a law other than the law of this state which would be a business corporation if incorporated under the laws of this state.

(22) Foreign nonprofit corporation means a corporation incorporated under a law other than the law of this state which would be a nonprofit corporation if incorporated under the laws of this state.

(23) Foreign unincorporated entity means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than this state.

(24) Governmental subdivision includes authority, county, district, and municipality.

(25) Includes denotes a partial definition.

(26) Individual means a natural person.

(27) Interest means either or both of the following rights under the organic law of an unincorporated entity:

(i) The right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(ii) The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

(28) Interest holder means a person who holds of record an interest.

(29) Means denotes an exhaustive definition.

(30) Membership means the rights of a member in a domestic or foreign nonprofit corporation.

(31) Nonfiling entity means an unincorporated entity that is of a type that is not created by filing a public organic document.

(32) Nonprofit corporation or domestic nonprofit corporation means a corporation incorporated under the laws of this state and subject to the provisions of the Nebraska Nonprofit Corporation Act.

(33) Notice is defined in section 21-215.

(34) Organic document means a public organic document or a private organic document.

(35) Organic law means the statute governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity.

(36) Owner liability means personal liability for a debt, obligation, or liability of a domestic or foreign business or nonprofit corporation or unincorporated entity that is imposed on a person:

(i) Solely by reason of the person's status as a shareholder, member, or interest holder; or

(ii) By the articles of incorporation, bylaws, or an organic document under a provision of the organic law of an entity authorizing the articles of incorporation, bylaws, or an organic document to make one or more specified shareholders, members, or interest holders liable in their capacity as shareholders, members, or interest holders for all or specified debts, obligations, or liabilities of the entity.

(37) Person includes an individual and an entity.

(38) Principal office means the office, in or out of this state, so designated in the biennial report where the principal executive offices of a domestic or foreign corporation are located.

(39) Private organic document means any document, other than the public organic document, if any, that determines the internal governance of an unincorporated entity. Where a private organic document has been amended or restated, the term means the private organic document as last amended or restated.

(40) Public organic document means the document, if any, that is filed of public record to create an unincorporated entity. Where a public organic document has been amended or restated, the term means the public organic document as last amended or restated.

(41) Proceeding includes civil suit and criminal, administrative, and investigatory action.

(42) Public corporation means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national securities association.

(43) Qualified director is defined in section 21-217.

(44) Record date means the date established under sections 21-237 to 21-252 or 21-253 to 21-283 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of the Nebraska Model Business Corporation Act. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(45) Record shareholder means (i) the person in whose name shares are registered in the records of the corporation or (ii) the person identified as the beneficial owner of shares in a beneficial ownership certificate pursuant to section 21-265 on file with the corporation to the extent of the rights granted by such certificate.

(46) Secretary means the corporate officer to whom the board of directors has delegated responsibility under subsection (c) of section 21-2,105 for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(47) Shareholder means, unless varied for purposes of a specific provision, a record shareholder.

(48) Shares means the units into which the proprietary interests in a corporation are divided.

(49) Sign or signature means, with present intent to authenticate or adopt a document:

(i) To execute or adopt a tangible symbol to a document, and includes any manual, facsimile, or conformed signature; or

(ii) To attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission.

(50) State, when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

(51) Subscriber means a person who subscribes for shares in a corporation, whether before or after incorporation.

(52) Unincorporated entity means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following: A domestic or foreign business or nonprofit corporation, an estate, a trust, a state, the United States, or a foreign government. The term includes a general partnership, limited liability company, limited partnership, business trust, joint stock association, and unincorporated nonprofit association.

(53) United States includes district, authority, bureau, commission, department, and any other agency of the United States.

(54) Voting group means all shares of one or more classes or series that under the articles of incorporation or the act are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All

shares entitled by the articles of incorporation or the act to vote generally on the matter are for that purpose a single voting group.

(55) Voting power means the current power to vote in the election of directors.

(56) Voting trust beneficial owner means an owner of a beneficial interest in shares of the corporation held in a voting trust established pursuant to subsection (a) of section 21-272. Unrestricted voting trust beneficial owner means, with respect to any shareholder rights, a voting trust beneficial owner whose entitlement to exercise the shareholder right in question is not inconsistent with the voting trust agreement.

(57) Writing or written means any information in the form of a document.

**Source:** Laws 2014, LB749, § 14; Laws 2016, LB794, § 2; Laws 2017, LB35, § 2.

Operative date January 1, 2018.

#### Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

### 21-217 Qualified director.

(MBCA 1.43) (a) A qualified director is a director who, at the time action is to be taken under:

(1) Section 21-279, does not have (i) a material interest in the outcome of the proceeding or (ii) a material relationship with a person who has such an interest;

(2) Section 21-2,113 or 21-2,115, (i) is not a party to the proceeding, (ii) is not a director as to whom a transaction is a director's conflicting interest transaction or who sought a disclaimer of the corporation's interest in a business opportunity under section 21-2,124, which transaction or disclaimer is challenged in the proceeding, and (iii) does not have a material relationship with a director described in either subdivision (a)(2)(i) or (ii) of this section;

(3) Section 21-2,122, is not a director (i) as to whom the transaction is a director's conflicting interest transaction or (ii) who has a material relationship with another director as to whom the transaction is a director's conflicting interest transaction;

(4) Section 21-2,124, would be a qualified director under subdivision (a)(3) of this section if the business opportunity were a director's conflicting interest transaction; or

(5) Subdivision (b)(6) of section 21-220, is not a director (i) to whom the limitation or elimination of the duty of an officer to offer potential business opportunities to the corporation would apply or (ii) who has a material relationship with another officer to whom the limitation or elimination would apply.

(b) For purposes of this section:

(1) Material relationship means a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken; and

(2) Material interest means an actual or potential benefit or detriment, other than one which would devolve on the corporation or the shareholders general-

ly, that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

(c) The presence of one or more of the following circumstances shall not automatically prevent a director from being a qualified director:

(1) Nomination or election of the director to the current board by any director who is not a qualified director with respect to the matter or by any person that has a material relationship with that director, acting alone or participating with others;

(2) Service as a director of another corporation of which a director who is not a qualified director with respect to the matter, or any individual who has a material relationship with that director, is or was also a director; or

(3) With respect to action to be taken under section 21-279, status as a named defendant, as a director against whom action is demanded, or as a director who approved the conduct being challenged.

**Source:** Laws 2014, LB749, § 17; Laws 2017, LB35, § 3.  
Operative date January 1, 2018.

## PART 2—INCORPORATION

### **21-220 Articles of incorporation.**

(MBCA 2.02) (a) The articles of incorporation must set forth:

(1) A corporate name for the corporation that satisfies the requirements of section 21-230;

(2) The number of shares the corporation is authorized to issue and, if such shares are to consist of one class only, the par value of each of such shares or, if such shares are to be divided into classes, the number of shares of each class and a statement of the par value of the shares of each such class;

(3) The street address of the corporation's initial registered office and the name of its initial registered agent at that office. A post office box number may be provided in addition to the street address;

(4) The name and address of each incorporator; and

(5) Any provision limiting or eliminating the requirement to hold an annual meeting of the shareholders if the corporation is registered or intends to register as an investment company under the federal Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq. The provision is not effective if such corporation does not become or ceases to be so registered.

(b) The articles of incorporation may set forth:

(1) The names and addresses of the individuals who are to serve as the initial directors;

(2) Provisions not inconsistent with law regarding:

(i) The purpose or purposes for which the corporation is organized;

(ii) Managing the business and regulating the affairs of the corporation;

(iii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(iv) A par value for authorized shares or classes of shares; or

(v) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(3) Any provision that under the Nebraska Model Business Corporation Act is required or permitted to be set forth in the bylaws;

(4) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for (i) the amount of a financial benefit received by a director to which the director is not entitled, (ii) an intentional infliction of harm on the corporation or the shareholders, (iii) a violation of section 21-2,104, or (iv) an intentional violation of criminal law;

(5) A provision permitting or making obligatory indemnification of a director for liability, as defined in subdivision (3) of section 21-2,110, to any person for any action taken, or any failure to take any action, as a director, except liability for (i) receipt of a financial benefit to which the director is not entitled, (ii) an intentional infliction of harm on the corporation or its shareholders, (iii) a violation of section 21-2,104, or (iv) an intentional violation of criminal law; and

(6) A provision limiting or eliminating any duty of a director or any other person to offer the corporation the right to have or participate in any, or one or more classes or categories of, business opportunities, prior to the pursuit or taking of the opportunity by the director or other person. Any application of such a provision to an officer or a related person of that officer (i) also requires a determination by the board of directors by action of qualified directors taken in compliance with the same procedures as are set forth in section 21-2,122 subsequent to the effective date of the provision applying the provision to a particular officer or any related person of that officer, and (ii) may be limited by the authorizing action of the board.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in the Nebraska Model Business Corporation Act.

(d) Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with subsection (k) of section 21-203.

(e) As used in this section, related person has the meaning specified in section 21-2,120.

**Source:** Laws 2014, LB749, § 20; Laws 2017, LB35, § 4.  
Operative date January 1, 2018.

## PART 7—SHAREHOLDERS

### SUBPART 1—MEETINGS

#### **21-254 Special meeting.**

(MBCA 7.02) (a) A corporation shall hold a special meeting of shareholders:

(1) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(2) If shareholders holding at least ten percent of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held, except that the articles of incorporation may fix a lower percentage or a higher percentage not exceeding twenty-five percent of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the

articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(b) If not otherwise fixed under section 21-255 or 21-259, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(c) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(d) Only business within the purpose or purposes described in the meeting notice required by subsection (c) of section 21-257 may be conducted at a special shareholders' meeting.

**Source:** Laws 2014, LB749, § 54; Laws 2017, LB35, § 5.  
Operative date January 1, 2018.

#### **21-255 Court-ordered meeting.**

(MBCA 7.03) (a) The district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may summarily order a meeting to be held:

(1) On application of any shareholder of the corporation, if an annual meeting was not held or action by written consent in lieu thereof did not become effective within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting; or

(2) On application of a shareholder who signed a demand for a special meeting valid under section 21-254, if:

(i) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary; or

(ii) The special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date or dates for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(c) For purposes of subdivision (a)(1) of this section, shareholder means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

**Source:** Laws 2014, LB749, § 55; Laws 2017, LB35, § 6.  
Operative date January 1, 2018.

### SUBPART 2—VOTING

#### **21-264 Proxies.**

(MBCA 7.22) (a) A shareholder may vote the shareholder's shares in person or by proxy.



(b) A shareholder, or the shareholder's agent or attorney-in-fact, may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which the recipient can determine the date of the transmission and that the transmission was authorized by the sender or the sender's agent or attorney-in-fact.

(c) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to count votes. An appointment is valid for the term provided in the appointment form and, if no term is provided, is valid for eleven months unless the appointment is irrevocable under subsection (d) of this section.

(d) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

- (1) A pledgee;
- (2) A person who purchased or agreed to purchase the shares;
- (3) A creditor of the corporation who extended it credit under terms requiring the appointment;
- (4) An employee of the corporation whose employment contract requires the appointment; or
- (5) A party to a voting agreement created under section 21-273.

(e) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to count votes before the proxy exercises authority under the appointment.

(f) An appointment made irrevocable under subsection (d) of this section is revoked when the interest with which it is coupled is extinguished.

(g) Unless it otherwise provides, an appointment made irrevocable under subsection (d) of this section continues in effect after a transfer of the shares and a transferee takes subject to the appointment, except that a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when acquiring the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(h) Subject to section 21-266 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

**Source:** Laws 2014, LB749, § 64; Laws 2017, LB35, § 7.  
Operative date January 1, 2018.

#### **21-265 Shares held by intermediaries and nominees.**

(MBCA 7.23) (a) A corporation's board of directors may establish a procedure under which a person on whose behalf shares are registered in the name of an

intermediary or nominee may elect to be treated by the corporation as the record shareholder by filing with the corporation a beneficial ownership certificate. The extent, terms, conditions, and limitations of this treatment shall be specified in the procedure. To the extent such person is treated under such procedure as having rights or privileges that the record shareholder otherwise would have, the record shareholder shall not have those rights or privileges.

(b) The procedure shall specify:

- (1) The types of intermediaries or nominees to which it applies;
- (2) The rights or privileges that the corporation recognizes in a person with respect to whom a beneficial ownership certificate is filed;
- (3) The manner in which the procedure is selected, which shall include that the beneficial ownership certificate be signed or assented to by or on behalf of the record shareholder and the person or persons on whose behalf the shares are held;
- (4) The information that must be provided when the procedure is selected;
- (5) The period for which selection of the procedure is effective;
- (6) Requirements for notice to the corporation with respect to the arrangement; and
- (7) The form and contents of the beneficial ownership certificate.

(c) The procedure may specify any other aspects of the rights and duties created by the filing of a beneficial ownership certificate.

**Source:** Laws 2014, LB749, § 65; Laws 2017, LB35, § 8.  
Operative date January 1, 2018.

#### **21-266 Corporation's acceptance of votes.**

(MBCA 7.24) (a) If the name signed on a vote, ballot, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, ballot, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(b) If the name signed on a vote, ballot, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, ballot, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

- (1) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;
- (2) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment;
- (3) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment;
- (4) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the

shareholder has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment; or

(5) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(c) The corporation is entitled to reject a vote, ballot, consent, waiver, or proxy appointment if the person authorized to count votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(d) Neither the corporation nor the person authorized to count votes, including an inspector of election under section 21-271, that accepts or rejects a vote, ballot, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or subsection (b) of section 21-264 is liable in damages to the shareholder for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, ballot, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

(f) If an inspector of election has been appointed under section 21-271, the inspector of election also has the authority to request information and make determinations under subsections (a), (b), and (c) of this section. Any determination made by the inspector of election under those subsections is controlling.

**Source:** Laws 2014, LB749, § 66; Laws 2017, LB35, § 9.  
Operative date January 1, 2018.

### **21-271 Inspectors of election.**

(MBCA 7.29) (a) A public corporation shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders in connection with determining voting results. Each inspector shall certify in writing that the inspector will faithfully execute the duties of inspector with strict impartiality and according to the best of the inspector's ability. An inspector may be an officer or employee of the corporation. The inspectors may appoint or retain other persons to assist the inspectors in the performance of the duties of inspector under subsection (b) of this section, and may rely on information provided by such persons and other persons, including those appointed to count votes, unless the inspectors believe reliance is unwarranted.

(b) The inspectors shall:

- (1) Ascertain the number of shares outstanding and the voting power of each;
- (2) Determine the shares represented at a meeting;
- (3) Determine the validity of proxy appointments and ballots;
- (4) Count the votes; and
- (5) Make a written report of the results.

(c) In performing their duties, the inspectors may examine (1) the proxy appointment forms and any other information provided in accordance with subsection (b) of section 21-264, (2) any envelope or related writing submitted with those appointment forms, (3) any ballots, (4) any evidence or other information specified in section 21-266, and (5) the relevant books and records

of the corporation relating to its shareholders and their entitlement to vote, including any securities position list provided by a depository clearing agency.

(d) The inspectors also may consider other information that they believe is relevant and reliable for the purpose of performing any of the duties assigned to them pursuant to subsection (b) of this section, including for the purpose of evaluating inconsistent, incomplete, or erroneous information and reconciling information submitted on behalf of banks, brokers, their nominees, or similar persons that indicates more votes being cast than a proxy is authorized by the record shareholder to cast or more votes being cast than the record shareholder is entitled to cast. If the inspectors consider other information allowed by this subsection, they shall, in their report under subsection (b) of this section, specify the information considered by them, including the purpose or purposes for which the information was considered, the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for the inspectors' belief that such information is relevant and reliable.

(e) Determinations of law by the inspectors of election are subject to de novo review by a court in a proceeding under section 21-271.01 or other judicial proceeding.

**Source:** Laws 2014, LB749, § 71; Laws 2017, LB35, § 10.

Operative date January 1, 2018.

**21-271.01 Judicial review of corporate elections, shareholder votes, and other corporate governance disputes.**

(MBCA 7.29A) (a) Upon application of or in a proceeding commenced by a person specified in subsection (b) of this section, the district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may determine:

- (1) The validity of the election, appointment, removal, or resignation of a director or officer of the corporation;
- (2) The right of an individual to hold the office of director or officer of the corporation;
- (3) The result or validity of an election or vote by the shareholders of the corporation;
- (4) The right of a director to membership on a committee of the board of directors; and
- (5) The right of a person to nominate or an individual to be nominated as a candidate for election or appointment as a director of the corporation, and any right under a bylaw adopted pursuant to subsection (c) of section 21-224 or any comparable right under any provision of the articles of incorporation, contract, or applicable law.

(b) An application or proceeding pursuant to subsection (a) of this section may be filed or commenced by any of the following persons:

- (1) The corporation;
- (2) Any record shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation;
- (3) A director of the corporation, an individual claiming the office of director, or a director whose membership on a committee of the board of directors is

contested, in each case who is seeking a determination of his or her right to such office or membership;

(4) An officer of the corporation or an individual claiming to be an officer of the corporation, in each case who is seeking a determination of his or her right to such office; and

(5) A person claiming a right covered by subdivision (a)(5) of this section and who is seeking a determination of such right.

(c) In connection with any application or proceeding under subsection (a) of this section, the following shall be named as defendants, unless such person made the application or commenced the proceeding:

(1) The corporation;

(2) Any individual whose right to office or membership on a committee of the board of directors is contested;

(3) Any individual claiming the office or membership at issue; and

(4) Any person claiming a right covered by subdivision (a)(5) of this section that is at issue.

(d) In connection with any application or proceeding under subsection (a) of this section, service of process may be made upon each of the persons specified in subsection (c) of this section either by:

(1) Serving on the corporation process addressed to such person in any manner provided by statute of this state or by rule of the applicable court for service on the corporation; or

(2) Service of process on such person in any manner provided by statute of this state or by rule of the applicable court.

(e) When service of process is made upon a person other than the corporation by service upon the corporation pursuant to subdivision (d)(1) of this section, the plaintiff and the corporation or its registered agent shall promptly provide written notice of such service, together with copies of all process and the application or complaint, to such person at the person's last-known residence or business address, or as permitted by statute of this state or by rule of the applicable court.

(f) In connection with any application or proceeding under subsection (a) of this section, the court shall dispose of the application or proceeding on an expedited basis and also may:

(1) Order such additional or further notice as the court deems proper under the circumstances;

(2) Order that additional persons be joined as parties to the proceeding if the court determines that such joinder is necessary for a just adjudication of matters before the court;

(3) Order an election or meeting be held in accordance with the provisions of subsection (b) of section 21-255 or otherwise;

(4) Appoint a master to conduct an election or meeting;

(5) Enter temporary, preliminary, or permanent injunctive relief;

(6) Resolve solely for the purpose of this proceeding any legal or factual issues necessary for the resolution of any of the matters specified in subsection (a) of this section, including the right and power of persons claiming to own shares to vote at any meeting of the shareholders; and

(7) Order such other relief as the court determines is equitable, just, and proper.

(g) It is not necessary to make shareholders parties to a proceeding or application pursuant to this section unless the shareholder is a required defendant under subdivision (c)(4) of this section, relief is sought against the shareholder individually, or the court orders joinder pursuant to subdivision (f)(2) of this section.

(h) Nothing in this section limits, restricts, or abolishes the subject matter jurisdiction or powers of the court as they existed prior to the enactment of this section, and an application or proceeding pursuant to this section is not the exclusive remedy or proceeding available with respect to the matters specified in subsection (a) of this section.

**Source:** Laws 2017, LB35, § 11.

Operative date January 1, 2018.

#### SUBPART 4—DERIVATIVE PROCEEDINGS

##### **21-275 Subpart definitions.**

(MBCA 7.40) In sections 21-275 to 21-282:

(1) Derivative proceeding means a civil suit in the right of a domestic corporation or, to the extent provided in section 21-282, in the right of a foreign corporation.

(2) Shareholder means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

**Source:** Laws 2014, LB749, § 75; Laws 2017, LB35, § 12.

Operative date January 1, 2018.

#### SUBPART 5—PROCEEDING TO APPOINT CUSTODIAN OR RECEIVER

##### **21-283 Shareholder action to appoint custodian or receiver.**

(MBCA 7.48) (a) The court may appoint one or more persons to be custodians, or, if the corporation is insolvent, to be receivers, of and for a corporation in a proceeding by a shareholder when it is established that:

(1) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or

(2) The directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

(b) The court:

(1) May issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing is held;

(2) Shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and

(3) Has jurisdiction over the corporation and all of its property, wherever located.

(c) The court may appoint an individual or domestic or foreign corporation, authorized to transact business in this state, as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

(d) The court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. Among other powers:

(1) A custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation; and

(2) A receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court and (ii) may sue and defend in the receiver's own name as receiver in all courts of this state.

(e) The court during a custodianship may redesignate the custodian a receiver, and during a receivership may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.

(f) The court from time to time during the custodianship or receivership may order compensation paid and expense disbursements or reimbursements made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

(g) In this section, shareholder means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

**Source:** Laws 2014, LB749, § 83; Laws 2017, LB35, § 13.  
Operative date January 1, 2018.

## PART 8—DIRECTORS AND OFFICERS

### SUBPART 1—BOARD OF DIRECTORS

#### **21-285 Qualifications of directors.**

(MBCA 8.02) (a) The articles of incorporation or bylaws may prescribe qualifications for directors or for nominees for directors. Qualifications must be reasonable as applied to the corporation and must be lawful.

(b) A requirement that is based on a past, current, or prospective action, or expression of an opinion, by a nominee or director that could limit the ability of a nominee or director to discharge his or her duties as a director is not a permissible qualification under this section. Notwithstanding the foregoing, qualifications may include not being or having been subject to specified criminal, civil, or regulatory sanctions or not having been removed as a director by judicial action or for cause.

(c) A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

(d) A qualification for nomination for director prescribed before a person's nomination shall apply to such person at the time of nomination. A qualification for nomination for director prescribed after a person's nomination shall not apply to such person with respect to such nomination.

(e) A qualification for director prescribed before the start of a director's term may apply only at the time an individual becomes a director or may apply

during a director's term. A qualification prescribed during a director's term shall not apply to that director before the end of that term.

**Source:** Laws 2014, LB749, § 85; Laws 2017, LB35, § 14.  
Operative date January 1, 2018.

#### SUBPART 3—DIRECTORS

##### **21-2,103 Standards of liability for directors.**

(MBCA 8.31) (a) A director shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director unless the party asserting liability in a proceeding establishes that:

(1) No defense interposed by the director based on (i) any provision in the articles of incorporation authorized by subdivision (b)(4) or (6) of section 21-220, (ii) the protection afforded by section 21-2,121 for action taken in compliance with section 21-2,122 or 21-2,123, or (iii) the protection afforded by section 21-2,124, precludes liability; and

(2) The challenged conduct consisted or was the result of:

(i) Action not in good faith;

(ii) A decision:

(A) Which the director did not reasonably believe to be in the best interests of the corporation; or

(B) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances;

(iii) A lack of objectivity due to the director's familial, financial, or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct:

(A) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation; and

(B) After a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation;

(iv) A sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation or a failure to devote timely attention by making, or causing to be made, appropriate inquiry when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefor; or

(v) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

(b) The party seeking to hold the director liable:

(1) For money damages shall also have the burden of establishing that:

(i) Harm to the corporation or its shareholders has been suffered; and

(ii) The harm suffered was proximately caused by the director's challenged conduct;

(2) For other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever persua-



sion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

(3) For other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(c) Nothing contained in this section shall (1) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under subdivision (b)(3) of section 21-2,121, alter the burden of proving the fact or lack of fairness otherwise applicable, (2) alter the fact or lack of liability of a director under another section of the Nebraska Model Business Corporation Act, such as the provisions governing the consequences of an unlawful distribution under section 21-2,104 or a transactional interest under section 21-2,121, or (3) affect any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States.

**Source:** Laws 2014, LB749, § 103; Laws 2017, LB35, § 15.  
Operative date January 1, 2018.

#### SUBPART 5—INDEMNIFICATION AND ADVANCE FOR EXPENSES

##### **21-2,113 Advance for expenses.**

(MBCA 8.53) (a) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a member of the board of directors if the director delivers to the corporation a signed written undertaking of the director to repay any funds advanced (1) if the director is not entitled to mandatory indemnification under section 21-2,112 and (2) it is ultimately determined under section 21-2,114 or 21-2,115 that the director is not entitled to indemnification.

(b) The undertaking required by subdivision (a) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(c) Authorizations under this section shall be made:

(1) By the board of directors:

(i) If there are two or more qualified directors, by a majority vote of all the qualified directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee consisting solely of two or more qualified directors appointed by such a vote; or

(ii) If there are fewer than two qualified directors, by the vote necessary for action by the board in accordance with subsection (c) of section 21-299, in which authorization directors who are not qualified directors may participate; or

(2) By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the authorization.

**Source:** Laws 2014, LB749, § 113; Laws 2017, LB35, § 16.  
Operative date January 1, 2018.

**21-2,114 Court-ordered indemnification and advance for expenses.**

(MBCA 8.54) (a) A director who is a party to a proceeding because he or she is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:

(1) Order indemnification if the court determines that the director is entitled to mandatory indemnification under section 21-2,112;

(2) Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by subsection (a) of section 21-2,118; or

(3) Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable:

(i) To indemnify the director; or

(ii) To advance expenses to the director, even if, in the case of subdivision (a)(3)(i) or (ii) of this section he or she has not met the relevant standard of conduct set forth in subsection (a) of section 21-2,111, failed to comply with section 21-2,113, or was adjudged liable in a proceeding referred to in subdivision (d)(1) or (2) of section 21-2,111, but if the director was adjudged so liable indemnification shall be limited to expenses incurred in connection with the proceeding.

(b) If the court determines that the director is entitled to indemnification under subdivision (a)(1) of this section or to indemnification or advance for expenses under subdivision (a)(2) of this section, it shall also order the corporation to pay the director's expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subdivision (a)(3) of this section, it may also order the corporation to pay the director's expenses to obtain court-ordered indemnification or advance for expenses.

**Source:** Laws 2014, LB749, § 114; Laws 2017, LB35, § 17.

Operative date January 1, 2018.

**SUBPART 6—DIRECTORS' CONFLICTING INTEREST TRANSACTIONS****21-2,120 Subpart definitions.**

(MBCA 8.60) In sections 21-2,120 to 21-2,123:

(1) Director's conflicting interest transaction means a transaction effected or proposed to be effected by the corporation or by an entity controlled by the corporation:

(i) To which, at the relevant time, the director is a party;

(ii) Respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director; or

(iii) Respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(2) Control, including the term controlled by, means (i) having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise, or (ii) being subject

to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

(3) Relevant time means (i) the time at which directors' action respecting the transaction is taken in compliance with section 21-2,122, or (ii) if the transaction is not brought before the board of directors of the corporation, or its committee, for action under section 21-2,122, at the time the corporation, or an entity controlled by the corporation, becomes legally obligated to consummate the transaction.

(4) Material financial interest means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction.

(5) Related person means:

(i) The individual's spouse;

(ii) A child, stepchild, grandchild, parent, stepparent, grandparent, sibling, stepsibling, half-sibling, aunt, uncle, niece, or nephew, or spouse of any thereof, of the individual or of the individual's spouse;

(iii) A natural person living in the same home as the individual;

(iv) An entity, other than the corporation or an entity controlled by the corporation, controlled by the individual or any person specified in subdivisions (5)(i) through (iii) of this section;

(v) A domestic or foreign (A) business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which the individual is a director, (B) unincorporated entity of which the individual is a general partner or a member of the governing body, or (C) individual, trust, or estate for whom or of which the individual is a trustee, guardian, personal representative, or like fiduciary; or

(vi) A person that is, or an entity that is controlled by, an employer of the individual.

(6) Fair to the corporation means, for purposes of subdivision (b)(3) of section 21-2,121, that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was (i) fair in terms of the director's dealings with the corporation and (ii) comparable to what might have been obtainable in an arm's length transaction, given the consideration paid or received by the corporation.

(7) Required disclosure means disclosure of (i) the existence and nature of the director's conflicting interest and (ii) all facts known to the director respecting the subject matter of the transaction that a director free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

**Source:** Laws 2014, LB749, § 120; Laws 2017, LB35, § 18.  
Operative date January 1, 2018.

### **21-2,123 Shareholders' action.**

(MBCA 8.63) (a) Shareholders' action respecting a director's conflicting interest transaction is effective for purposes of subdivision (b)(2) of section 21-2,121 if a majority of the votes cast by the holders of all qualified shares are in favor of the transaction after (1) notice to shareholders describing the action to be taken respecting the transaction, (2) provision to the corporation of the

information referred to in subsection (b) of this section, and (3) communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure to the extent the information is not known by them. In the case of shareholders' action at a meeting, the shareholders entitled to vote shall be determined as of the record date for notice of the meeting.

(b) A director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to count votes, in writing, of the number of shares that the director knows are not qualified shares under subsection (c) of this section and the identity of the holders of those shares.

(c) For purposes of this section: (1) Holder means and held by refers to shares held by a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner; and (2) qualified shares means all shares entitled to be voted with respect to the transaction except for shares that the secretary or other officer or agent of the corporation authorized to count votes either knows, or under subsection (b) of this section is notified, are held by (i) a director who has a conflicting interest respecting the transaction or (ii) a related person of the director, excluding a person described in subdivision (5)(vi) of section 21-2,120.

(d) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with this section. Subject to subsection (e) of this section, shareholders' action that otherwise complies with this section is not affected by the presence of holders, or by the voting, of shares that are not qualified shares.

(e) If a shareholders' vote does not comply with subsection (a) of this section solely because of a director's failure to comply with subsection (b) of this section and if the director establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may take such action respecting the transaction and the director and may give such effect, if any, to the shareholders' vote as the court considers appropriate in the circumstances.

(f) When shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation or the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders in which action shares that are not qualified shares may participate.

**Source:** Laws 2014, LB749, § 123; Laws 2017, LB35, § 19.  
Operative date January 1, 2018.

#### SUBPART 7—BUSINESS OPPORTUNITIES

##### **21-2,124 Business opportunities.**

(MBCA 8.70) (a) If a director or officer pursues or takes advantage of a business opportunity, directly, or indirectly through or on behalf of another person, that action may not be the subject of equitable relief or give rise to an award of damages or other sanctions against the director, officer, or other person in a proceeding by or in the right of the corporation on the ground that the opportunity should have first been offered to the corporation if:

(1) Before the director, officer, or other person becomes legally obligated respecting the opportunity, the director or officer brings it to the attention of the corporation and either:

(i) Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section 21-2,122; or

(ii) Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section 21-2,123; in either case as if the decision being made concerned a director's conflicting interest transaction, except that, rather than making required disclosure as defined in section 21-2,120, the director or officer shall have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity known to the director or officer; or

(2) The duty to offer the corporation the business opportunity has been limited or eliminated pursuant to a provision of the articles of incorporation adopted, and where required, made effective by action of qualified directors, in accordance with subdivision (b)(6) of section 21-220.

(b) In any proceeding seeking equitable relief or other remedies based upon an alleged improper pursuit or taking advantage of a business opportunity by a director or officer, directly, or indirectly through or on behalf of another person, the fact that the director or officer did not employ the procedure described in subdivision (a)(1)(i) or (ii) of this section before pursuing or taking advantage of the opportunity shall not create an implication that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director or officer breached a duty to the corporation in the circumstances.

**Source:** Laws 2014, LB749, § 124; Laws 2017, LB35, § 20.  
Operative date January 1, 2018.

## PART 9—DOMESTICATION AND CONVERSION

### SUBPART 2—DOMESTICATION

#### **21-2,129 Articles of domestication.**

(MBCA 9.22) (a) After the domestication of a foreign business corporation has been authorized as required by the laws of the foreign jurisdiction, articles of domestication shall be signed by any officer or other duly authorized representative. The articles shall set forth:

(1) The name of the corporation immediately before the filing of the articles of domestication and, if that name is unavailable for use in this state or the corporation desires to change its name in connection with the domestication, a name that satisfies the requirements of section 21-230;

(2) The jurisdiction of incorporation of the corporation immediately before the filing of the articles of domestication and the date the corporation was incorporated in that jurisdiction; and

(3) A statement that the domestication of the corporation in this state was duly authorized as required by the laws of the jurisdiction in which the corporation was incorporated immediately before its domestication in this state.

(b) The articles of domestication shall either contain all of the provisions that subsection (a) of section 21-220 requires to be set forth in articles of incorporation and any other desired provisions that subsection (b) of section 21-220 permits to be included in articles of incorporation or shall have attached articles of incorporation. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted.

(c) The articles of domestication shall be delivered to the Secretary of State for filing, and shall take effect at the effective time provided in section 21-206. Within ten business days after the articles of domestication take effect, a foreign business corporation becoming a domestic business corporation shall send written notice of domestication to the last-known address of any holder of a security interest in collateral of such foreign business corporation.

(d) If the foreign corporation is authorized to transact business in this state under sections 21-2,203 to 21-2,220, its certificate of authority shall be canceled automatically on the effective date of its domestication.

**Source:** Laws 2014, LB749, § 129; Laws 2017, LB99, § 1.  
Effective date August 24, 2017.

#### **21-2,130 Surrender of charter upon domestication.**

(MBCA 9.23) (a) Whenever a domestic business corporation has adopted and approved, in the manner required by sections 21-2,127 to 21-2,132, a plan of domestication providing for the corporation to be domesticated in a foreign jurisdiction, articles of charter surrender shall be signed on behalf of the corporation by any officer or other duly authorized representative. The articles of charter surrender shall set forth:

- (1) The name of the corporation;
- (2) A statement that the articles of charter surrender are being filed in connection with the domestication of the corporation in a foreign jurisdiction;
- (3) A statement that the domestication was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by the Nebraska Model Business Corporation Act and the articles of incorporation; and
- (4) The corporation's new jurisdiction of incorporation.

(b) The articles of charter surrender shall be delivered by the corporation to the Secretary of State for filing. The articles of charter surrender shall take effect at the effective time provided in section 21-206. Within ten business days after the articles of charter surrender take effect, a domestic business corporation becoming domesticated in a foreign jurisdiction shall send written notice of charter surrender to the last-known address of any holder of a security interest in collateral of such domestic business corporation.

**Source:** Laws 2014, LB749, § 130; Laws 2017, LB99, § 2.  
Effective date August 24, 2017.

### SUBPART 3—NONPROFIT CONVERSION

#### **21-2,135 Articles of nonprofit conversion.**

(MBCA 9.32) (a) After a plan of nonprofit conversion providing for the conversion of a domestic business corporation to a domestic nonprofit corporation has been adopted and approved as required by the Nebraska Model

Business Corporation Act, articles of nonprofit conversion shall be signed on behalf of the corporation by any officer or other duly authorized representative. The articles shall set forth:

(1) The name of the corporation immediately before the filing of the articles of nonprofit conversion and if that name does not satisfy the requirements of the Nebraska Nonprofit Corporation Act, or the corporation desires to change its name in connection with the conversion, a name that satisfies the requirements of the Nebraska Nonprofit Corporation Act; and

(2) A statement that the plan of nonprofit conversion was duly approved by the shareholders in the manner required by the Nebraska Model Business Corporation Act and the articles of incorporation.

(b) The articles of nonprofit conversion shall either contain all of the provisions that the Nebraska Nonprofit Corporation Act requires to be set forth in articles of incorporation of a domestic nonprofit corporation and any other desired provisions permitted by the Nebraska Nonprofit Corporation Act or shall have attached articles of incorporation that satisfy the requirements of the Nebraska Nonprofit Corporation Act. In either case, provisions that would not be required to be included in restated articles of incorporation of a domestic nonprofit corporation may be omitted.

(c) The articles of nonprofit conversion shall be delivered to the Secretary of State for filing and shall take effect at the effective time provided in section 21-206. Within ten business days after the articles of nonprofit conversion take effect, a domestic business corporation converting into a domestic nonprofit corporation shall send written notice of conversion to the last-known address of any holder of a security interest in collateral of such domestic business corporation.

**Source:** Laws 2014, LB749, § 135; Laws 2017, LB99, § 3.  
Effective date August 24, 2017.

#### Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

### SUBPART 4—FOREIGN NONPROFIT DOMESTICATION AND CONVERSION

#### **21-2,140 Articles of domestication and conversion.**

(MBCA 9.41) (a) After the conversion of a foreign nonprofit corporation to a domestic business corporation has been authorized as required by the laws of the foreign jurisdiction, articles of domestication and conversion shall be signed by any officer or other duly authorized representative. The articles shall set forth:

(1) The name of the corporation immediately before the filing of the articles of domestication and conversion and, if that name is unavailable for use in this state or the corporation desires to change its name in connection with the domestication and conversion, a name that satisfies the requirements of section 21-230;

(2) The jurisdiction of incorporation of the corporation immediately before the filing of the articles of domestication and conversion and the date the corporation was incorporated in that jurisdiction; and

(3) A statement that the domestication and conversion of the corporation in this state was duly authorized as required by the laws of the jurisdiction in which the corporation was incorporated immediately before its domestication and conversion in this state.

(b) The articles of domestication and conversion shall either contain all of the provisions that subsection (a) of section 21-220 requires to be set forth in articles of incorporation and any other desired provisions that subsection (b) of section 21-220 permits to be included in articles of incorporation or shall have attached articles of incorporation. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted.

(c) The articles of domestication and conversion shall be delivered to the Secretary of State for filing and shall take effect at the effective time provided in section 21-206. Within ten business days after the articles of domestication and conversion take effect, a foreign nonprofit corporation converting into a domestic business corporation shall send written notice of domestication and conversion to the last-known address of any holder of a security interest in collateral of such foreign nonprofit corporation.

(d) If the foreign nonprofit corporation is authorized to transact business in this state under the foreign qualification provision of the Nebraska Nonprofit Corporation Act, its certificate of authority shall be canceled automatically on the effective date of its domestication and conversion.

**Source:** Laws 2014, LB749, § 140; Laws 2017, LB99, § 4.  
Effective date August 24, 2017.

**Cross References**

Nebraska Nonprofit Corporation Act, see section 21-1901.

**SUBPART 5—ENTITY CONVERSION**

**21-2,146 Articles of entity conversion.**

(MBCA 9.53) (a) After the conversion of a domestic business corporation to a domestic unincorporated entity has been adopted and approved as required by the Nebraska Model Business Corporation Act, articles of entity conversion shall be signed on behalf of the corporation by any officer or other duly authorized representative. The articles shall:

(1) Set forth the name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which shall be a name that satisfies the organic law of the surviving entity;

(2) State the type of unincorporated entity that the surviving entity will be;

(3) Set forth a statement that the plan of entity conversion was duly approved by the shareholders in the manner required by the act and the articles of incorporation; and

(4) If the surviving entity is a filing entity, either contain all of the provisions required to be set forth in its public organic document and any other desired provisions that are permitted or have attached a public organic document; except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

(b) After the conversion of a domestic unincorporated entity to a domestic business corporation has been adopted and approved as required by the



organic law of the unincorporated entity, articles of entity conversion shall be signed on behalf of the unincorporated entity by any officer or other duly authorized representative. The articles shall:

(1) Set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be changed which shall be a name that satisfies the requirements of section 21-230;

(2) Set forth a statement that the plan of entity conversion was duly approved in accordance with the organic law of the unincorporated entity; and

(3) Either contain all of the provisions that subsection (a) of section 21-220 requires to be set forth in articles of incorporation and any other desired provisions that subsection (b) of section 21-220 permits to be included in articles of incorporation or have attached articles of incorporation; except that, in either case, provisions that would not be required to be included in restated articles of incorporation of a domestic business corporation may be omitted.

(c) After the conversion of a foreign unincorporated entity to a domestic business corporation has been authorized as required by the laws of the foreign jurisdiction, articles of entity conversion shall be signed on behalf of the foreign unincorporated entity by any officer or other duly authorized representative. The articles shall:

(1) Set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be changed which shall be a name that satisfies the requirements of section 21-230;

(2) Set forth the jurisdiction under the laws of which the unincorporated entity was organized immediately before the filing of the articles of entity conversion and the date on which the unincorporated entity was organized in that jurisdiction;

(3) Set forth a statement that the conversion of the unincorporated entity was duly approved in the manner required by its organic law; and

(4) Either contain all of the provisions that subsection (a) of section 21-220 requires to be set forth in articles of incorporation and any other desired provisions that subsection (b) of section 21-220 permits to be included in articles of incorporation or have attached articles of incorporation; except that, in either case, provisions that would not be required to be included in restated articles of incorporation of a domestic business corporation may be omitted.

(d) The articles of entity conversion shall be delivered to the Secretary of State for filing and shall take effect at the effective time provided in section 21-206. Within ten business days after the articles of entity conversion take effect, the converting entity shall send written notice of conversion to the last-known address of any holder of a security interest in collateral of the converting entity. Articles of entity conversion under subsection (a) or (b) of this section may be combined with any required conversion filing under the organic law of the domestic unincorporated entity if the combined filing satisfies the requirements of both this section and the other organic law.

(e) If the converting entity is a foreign unincorporated entity that is authorized to transact business in this state under a provision of law similar to sections 21-2,203 to 21-2,220, its certificate of authority or other type of foreign

qualification shall be canceled automatically on the effective date of its conversion.

**Source:** Laws 2014, LB749, § 146; Laws 2017, LB99, § 5.  
Effective date August 24, 2017.

#### PART 13—APPRAISAL RIGHTS

##### SUBPART 1—RIGHT TO APPRAISAL AND PAYMENT FOR SHARES

###### **21-2,171 Definitions.**

(MBCA 13.01) In sections 21-2,171 to 21-2,183:

(1) Affiliate means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive thereof. For purposes of subdivision (5) of this section, a person is deemed to be an affiliate of its senior executives.

(2) Corporation means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in sections 21-2,176 to 21-2,182, includes the surviving entity in a merger.

(3) Fair value means the value of the corporation's shares determined:

(i) Immediately before the effectuation of the corporate action to which the shareholder objects;

(ii) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(iii) Without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles pursuant to subdivision (a)(5) of section 21-2,172.

(4) Interest means interest from the effective date of the corporate action until the date of payment at the rate of interest specified in section 45-104, as such rate may from time to time be adjusted by the Legislature.

(5) Interested transaction means a corporate action described in subsection (a) of section 21-2,172, other than a merger pursuant to section 21-2,165, involving an interested person in which any of the shares or assets of the corporation are being acquired or converted. As used in this definition:

(i) Interested person means a person or an affiliate of a person who at any time during the one-year period immediately preceding approval by the board of directors of the corporate action:

(A) Was the beneficial owner of twenty percent or more of the voting power of the corporation, other than as owner of excluded shares;

(B) Had the power, contractually or otherwise, other than as owner of excluded shares, to cause the appointment or election of twenty-five percent or more of the directors to the board of directors of the corporation; or

(C) Was a senior executive or director of the corporation or a senior executive of any affiliate thereof and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

(I) Employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;

(II) Employment, consulting, retirement, or similar benefits established in contemplation of or as part of the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in section 21-2,122; or

(III) In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate;

(ii) Beneficial owner means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote or to direct the voting of shares; except that a member of a national securities exchange is not deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because the member is the record holder of the securities if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby is deemed to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group; and

(iii) Excluded shares means shares acquired pursuant to an offer for all shares having voting power if the offer was made within one year prior to the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action.

(6) Preferred shares means a class or series of shares whose holders have preference over any other class or series with respect to distributions.

(7) Senior executive means the chief executive officer, chief operating officer, chief financial officer, and anyone in charge of a principal business unit or function.

(8) Shareholder means a record shareholder, a beneficial shareholder, and a voting trust beneficial owner.

**Source:** Laws 2014, LB749, § 171; Laws 2017, LB35, § 21.  
Operative date January 1, 2018.

### **21-2,172 Right to appraisal.**

(MBCA 13.02) (a) A shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares in the event of any of the following corporate actions:

(1) Consummation of a merger to which the corporation is a party (i) if shareholder approval is required for the merger by section 21-2,164, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger or (ii) if the corporation is a subsidiary and the merger is governed by section 21-2,165;

(2) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired, except that appraisal rights

shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(3) Consummation of a disposition of assets pursuant to section 21-2,170 if the shareholder is entitled to vote on the disposition, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series if (i) under the terms of the corporate action approved by the shareholders there is to be distributed to shareholders in cash its net assets, in excess of a reasonable amount reserved to meet claims of the type described in sections 21-2,189 and 21-2,190, (A) within one year after the shareholders' approval of the action and (B) in accordance with their respective interests determined at the time of distribution and (ii) the disposition of assets is not an interested transaction;

(4) An amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created;

(5) Any other amendment to the articles of incorporation, merger, share exchange, or disposition of assets to the extent provided by the articles of incorporation, bylaws, or a resolution of the board of directors;

(6) Consummation of a domestication if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects and represent at least the same percentage interest of the total voting rights of the outstanding shares of the corporation as the shares held by the shareholder before the domestication;

(7) Consummation of a conversion of the corporation to nonprofit status pursuant to sections 21-2,133 to 21-2,138; or

(8) Consummation of a conversion of the corporation to an unincorporated entity pursuant to sections 21-2,143 to 21-2,149.

(b) Notwithstanding subsection (a) of this section, the availability of appraisal rights under subdivisions (a)(1), (2), (3), (4), (6), and (8) of this section shall be limited in accordance with the following provisions:

(1) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

(i) A covered security under section 18(b)(1)(A) or (B) of the federal Securities Act of 1933, as amended, 15 U.S.C. 77r(b)(1)(A) or (B);

(ii) Traded in an organized market and has at least two thousand shareholders and a market value of at least twenty million dollars, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors, beneficial shareholders, and voting trust beneficial owners owning more than ten percent of such shares; or

(iii) Issued by an open-end management investment company registered with the Securities and Exchange Commission under the federal Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq., and may be redeemed at the option of the holder at net asset value;

(2) The applicability of subdivision (b)(1) of this section shall be determined as of:

(i) The record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

(ii) The day before the effective date of such corporate action if there is no meeting of shareholders;

(3) Subdivision (b)(1) of this section shall not be applicable and appraisal rights shall be available pursuant to subsection (a) of this section for the holders of any class or series of shares (i) who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation or any other proprietary interest of any other entity that satisfies the standards set forth in subdivision (b)(1) of this section at the time the corporate action becomes effective or (ii) in the case of the consummation of a disposition of assets pursuant to section 21-2,170, unless such cash, shares, or proprietary interests are, under the terms of the corporate action approved by the shareholders as part of a distribution to shareholders of the net assets of the corporation in excess of a reasonable amount to meet claims of the type described in sections 21-2,189 and 21-2,190, (A) within one year after the shareholders' approval of the action and (B) in accordance with their respective interests determined at the time of the distribution; and

(4) Subdivision (b)(1) of this section shall not be applicable and appraisal rights shall be available pursuant to subsection (a) of this section for the holders of any class or series of shares where the corporate action is an interested transaction.

(c) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, except that (1) no such limitation or elimination shall be effective if the class or series does not have the right to vote separately as a voting group, alone or as part of a group, on the action or if the action is a nonprofit conversion under sections 21-2,133 to 21-2,138, or a conversion to an unincorporated entity under sections 21-2,143 to 21-2,149, or a merger having a similar effect and (2) any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within one year after that date if such action would otherwise afford appraisal rights.

(d) The right to dissent and obtain payment under sections 21-2,171 to 21-2,183 shall not apply to shareholders of a bank, trust company, stock-owned savings and loan association, or the holding company of any such bank, trust company, or stock-owned savings and loan association.

**Source:** Laws 2014, LB749, § 172; Laws 2016, LB794, § 10; Laws 2017, LB35, § 22.

Operative date January 1, 2018.

**21-2,173 Assertion of rights by nominees and beneficial owners.**

(MBCA 13.03) (a) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder or a voting trust beneficial owner only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder or the voting trust beneficial owner and notifies the corporation in writing of the name and address of each beneficial shareholder or voting trust beneficial owner on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(b) A beneficial shareholder and a voting trust beneficial owner may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

(1) Submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in subdivision (b)(2)(ii) of section 21-2,176; and

(2) Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder or the voting trust beneficial owner.

**Source:** Laws 2014, LB749, § 173; Laws 2017, LB35, § 23.  
Operative date January 1, 2018.

## PART 14—DISSOLUTION

### SUBPART 3—JUDICIAL DISSOLUTION

#### **21-2,197 Grounds for judicial dissolution.**

(MBCA 14.30) (a) Except as provided in subdivision (2)(ii) of this subsection, the court may dissolve a corporation:

(1) In a proceeding by the Attorney General if it is established that:

(i) The corporation obtained its articles of incorporation through fraud; or

(ii) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2)(i) In a proceeding by a shareholder if it is established that:

(A) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock;

(B) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(C) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(D) The corporate assets are being misapplied or wasted; and

(ii) The right to bring a proceeding under this subdivision does not apply to shareholders of a bank, trust company, or stock-owned savings and loan association;

(3) In a proceeding by a creditor if it is established that:

(i) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision; or

(5) In a proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

(b) Subdivision (a)(2) of this section shall not apply in the case of a corporation that, on the date of the filing of the proceeding, has shares which are:

(1) A covered security under section (18)(b)(1)(A) or (B) of the Securities Act of 1933, as amended; or

(2) Not a covered security, but are held by at least three hundred shareholders and the shares outstanding have a market value of at least twenty million dollars, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors, beneficial shareholders, and voting trust beneficial owners owning more than ten percent of such shares.

(c) In subsection (a) of this section, shareholder means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner; in subsection (b) of this section, shareholder means a record shareholder, a beneficial shareholder, and a voting trust beneficial owner.

**Source:** Laws 2014, LB749, § 197; Laws 2017, LB35, § 24.  
Operative date January 1, 2018.

#### **21-2,201 Election to purchase in lieu of dissolution.**

(MBCA 14.34) (a) In a proceeding under subdivision (a)(2) of section 21-2,197 to dissolve a corporation, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(b) An election to purchase pursuant to this section may be filed with the court at any time within ninety days after the filing of the petition under subdivision (a)(2) of section 21-2,197 or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within ten days thereafter, give written notice to all shareholders, other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate must file notice of their intention to join in the purchase no later than thirty days after the effective date of the notice to them. All shareholders who have filed an election or notice of their

intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under subdivision (a)(2) of section 21-2,197 may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his or her shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other disposition.

(c) If, within sixty days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

(d) If the parties are unable to reach an agreement as provided for in subsection (c) of this section, the court, upon application of any party, shall stay the proceedings under subdivision (a)(2) of section 21-2,197 and determine the fair value of the petitioner's shares as of the day before the date on which the petition under subdivision (a)(2) of section 21-2,197 was filed or as of such other date as the court deems appropriate under the circumstances.

(e) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate specified in section 45-104, as such rate may from time to time be adjusted by the Legislature, and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under subdivision (a)(2)(i)(B) or (D) of section 21-2,197, it may award expenses to the petitioning shareholder.

(f) Upon entry of an order under subsection (c) or (e) of this section, the court shall dismiss the petition to dissolve the corporation under subdivision (a)(2) of section 21-2,197, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded by the order of the court which shall be enforceable in the same manner as any other judgment.

(g) The purchase ordered pursuant to subsection (e) of this section shall be made within ten days after the date the order becomes final.

(h) Any payment by the corporation pursuant to an order under subsection (c) or (e) of this section, other than an award of expenses pursuant to subsection (e) of this section, is subject to the provisions of section 21-252.

**Source:** Laws 2014, LB749, § 201; Laws 2017, LB35, § 25.  
Operative date January 1, 2018.



## PART 16—RECORDS AND REPORTS

## SUBPART 1—RECORDS

**21-2,222 Inspection of records by shareholders.**

(MBCA 16.02) (a) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection (e) of section 21-2,221 if the shareholder gives the corporation a signed written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

(b) For any meeting of shareholders for which the record date for determining shareholders entitled to vote at the meeting is different than the record date for notice of the meeting, any person who becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote at the meeting is entitled to obtain from the corporation upon request the notice and any other information provided by the corporation to shareholders in connection with the meeting unless the corporation has made such information generally available to shareholders by posting it on its web site or by other generally recognized means. Failure of a corporation to provide such information does not affect the validity of action taken at the meeting.

(c) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (d) of this section and gives the corporation a signed written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy:

(1) Excerpts from minutes of any meeting of the board of directors or a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders, board of directors, or a committee of the board without a meeting, to the extent not subject to inspection under subsection (a) of this section;

(2) Accounting records of the corporation; and

(3) The record of shareholders.

(d) A shareholder may inspect and copy the records described in subsection (c) of this section only if:

(1) The shareholder's demand is made in good faith and for a proper purpose;

(2) The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

(3) The records are directly connected with the shareholder's purpose.

(e) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(f) This section does not affect:

(1) The right of a shareholder to inspect records under section 21-262 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(2) The power of a court, independently of the Nebraska Model Business Corporation Act, to compel the production of corporate records for examination.

(g) For purposes of this section, shareholder means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

**Source:** Laws 2014, LB749, § 222; Laws 2017, LB35, § 26.  
Operative date January 1, 2018.

## ARTICLE 17

### CREDIT UNIONS

#### (a) CREDIT UNION ACT

##### Section

21-1701.	Act, how cited.
21-1708.01.	Financial institution, defined.
21-1709.	Fixed asset, defined.
21-1724.	Organization; procedure; hearing.
21-1725.	Repealed. Laws 2017, LB375, § 10.
21-1736.	Examinations.
21-1740.	Credit union; powers.
21-1741.	Safe deposit box service.
21-1770.	Loan officer license; opt out.
21-1782.	Joint accounts.
21-17,115.	Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception.
21-17,116.	Repealed. Laws 2017, LB375, § 10.

#### (a) CREDIT UNION ACT

##### **21-1701 Act, how cited.**

Sections 21-1701 to 21-17,115 shall be known and may be cited as the Credit Union Act.

**Source:** Laws 1996, LB 948, § 1; Laws 2000, LB 932, § 23; Laws 2002, LB 957, § 15; Laws 2017, LB375, § 1.  
Effective date August 24, 2017.

##### **21-1708.01 Financial institution, defined.**

Financial institution shall mean a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the United States, the department, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; or a trust company.

**Source:** Laws 2017, LB375, § 2.  
Effective date August 24, 2017.

##### **21-1709 Fixed asset, defined.**

Fixed asset shall mean assets as prescribed in generally accepted accounting principles.

**Source:** Laws 1996, LB 948, § 9; Laws 2017, LB375, § 3.  
Effective date August 24, 2017.

##### **21-1724 Organization; procedure; hearing.**

(1) Any nine or more individuals residing in the State of Nebraska who are nineteen years of age or older and who have a common bond pursuant to section 21-1743 may apply to the department on forms prescribed by the department for permission to organize a credit union and to become charter members and subscribers of the credit union.

(2) The subscribers shall execute in duplicate articles of association and shall agree to the terms of the articles of association. The terms shall state:

(a) The name, which shall include the words "credit union" and shall not be the same as the name of any other credit union in this state, whether or not organized under the Credit Union Act, and the location where the proposed credit union will have its principal place of business;

(b) The names and addresses of the subscribers to the articles of association and the number of shares subscribed by each;

(c) The par value of the shares of the credit union which shall be established by its board of directors. A credit union may have more than one class of shares;

(d) The common bond of members of the credit union; and

(e) That the existence of the credit union shall be perpetual.

(3) The subscribers shall prepare and adopt bylaws for the governance of the credit union. The bylaws shall be consistent with the Credit Union Act and shall be executed in duplicate.

(4) The subscribers shall select at least five qualified individuals to serve on the board of directors of the credit union, at least three qualified individuals to serve on the supervisory committee of the credit union, and at least three qualified individuals to serve on the credit committee of the credit union, if any. Such individuals shall execute a signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later.

(5) The articles of association and the bylaws, both executed in duplicate, shall be forwarded by the subscribers along with the required fee, if any, to the director, as an application for a certificate of approval.

(6) The director shall within one hundred twenty calendar days after receipt of the articles of association and the bylaws: (a) Act upon the application to determine whether the articles of association conform with this section and whether or not the character of the applicants and the conditions existing are favorable for the success of the credit union; and (b) notify the applicants of his or her decision.

(7) If the decision is favorable, the director shall issue a certificate of approval to the credit union. The certificate of approval shall be attached to the duplicate articles of association and returned, with the duplicate bylaws, to such subscribers.

(8) The subscribers shall file the certificate of approval with the articles of association attached in the office of the county clerk of the county in which the credit union is to locate its principal place of business. The county clerk shall accept and record the documents if they are accompanied by the proper fee and, after indexing, forward to the department proper documentation that the certificate of approval with the articles of association attached have been properly filed and recorded. When the documents are so recorded, the credit

union shall be organized in accordance with the Credit Union Act and may begin transacting business.

(9) If the director's decision on the application is unfavorable, he or she shall notify the subscribers of the reasons for the decision. The subscribers may then request a public hearing if no such hearing was held at the time the application was submitted for consideration.

(10) The request for a public hearing shall be made in writing to the director not more than thirty calendar days after his or her decision. The director, within ten calendar days after receipt of a request for a hearing, shall set a date for the hearing at a time and place convenient to the director and the subscribers, but no longer than sixty calendar days after receipt of such request. The director may request a stenographic record of the hearing.

**Source:** Laws 1996, LB 948, § 24; Laws 2017, LB375, § 4.  
Effective date August 24, 2017.

**21-1725 Repealed. Laws 2017, LB375, § 10.**

**21-1736 Examinations.**

(1) The director shall examine or cause to be examined each credit union as often as deemed necessary. Each credit union and all of its officials and agents shall give the director or any of the examiners appointed by him or her free and full access to all books, papers, securities, and other sources of information relative to such credit union. For purposes of the examination, the director may subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

(2) The department shall forward a report of the examination to the chairperson of the board of directors within ninety calendar days after completion. The report shall contain comments relative to the management of the affairs of the credit union and the general condition of its assets. Within ninety calendar days after the receipt of such report, the members of the board of directors and the members of the supervisory committee and credit committee, if any, shall meet to consider the matters contained in the report.

(3) The director may require special examinations of and special financial reports from a credit union or a credit union service organization in which a credit union loans, invests, or delegates substantially all managerial duties and responsibilities when he or she determines that such examinations and reports are necessary to enable the director to determine the safety of a credit union's operations or its solvency. The cost to the department of such special examinations shall be borne by the credit union being examined.

(4) The director may accept, in lieu of any examination of a credit union authorized by the laws of this state, a report of an examination made of a credit union by the National Credit Union Administration or may examine any such credit union jointly with such federal agency. The director may make available to the National Credit Union Administration copies of reports of any examination or any information furnished to or obtained by the director in any examination.

**Source:** Laws 1996, LB 948, § 36; Laws 2002, LB 957, § 18; Laws 2017, LB375, § 5.  
Effective date August 24, 2017.

**21-1740 Credit union; powers.**

(1) A credit union shall have all the powers specified in this section and all the powers specified by any other provision of the Credit Union Act.

(2) A credit union may make contracts.

(3) A credit union may sue and be sued.

(4) A credit union may adopt a seal and alter the same.

(5) A credit union may individually or jointly with other credit unions purchase, lease, or otherwise acquire and hold tangible personal property necessary or incidental to its operations. A credit union shall depreciate or appreciate such personal property in the manner and at the rates the director may prescribe by rule or order from time to time.

(6) A credit union may, in whole or part, sell, lease, assign, pledge, hypothecate, or otherwise dispose of its tangible personal property, including such property obtained as a result of defaults under obligations owing to it.

(7) A credit union may incur and pay necessary and incidental operating expenses.

(8) A credit union may receive, from a member, from another credit union, from an officer, or from an employee, payments representing equity on (a) share accounts which may be issued at varying dividend rates, (b) share account certificates which may be issued at varying dividend rates and maturities, and (c) share draft accounts, subject to such terms, rates, and conditions as may be established by the board of directors, within limitations prescribed by the department. A credit union shall provide for the transfer and withdrawal of funds from accounts by the means and through the payment system that the board of directors determines best serves the convenience and needs of members.

(9) A credit union may lend its funds to its members as provided in the Credit Union Act.

(10) A credit union may borrow from any source in an amount not exceeding fifty percent of its capital and deposits.

(11) A credit union may provide debt counseling and other financial counseling services to its members.

(12) A credit union may, in whole or in part, discount, sell, assign, pledge, hypothecate, or otherwise dispose of its intangible personal property. The approval of the director shall be required before a credit union may discount, sell, assign, pledge, hypothecate, or otherwise dispose of twenty percent or more of its intangible personal property within one month unless the credit union is in liquidation.

(13) A credit union may purchase any of the assets of another financial institution or assume any of the liabilities of another financial institution with the approval of the director. A credit union may also purchase any of the assets of a financial institution which is in liquidation or receivership.

(14) A credit union may make deposits in or loans to banks, savings banks, savings and loan associations, and trust companies, purchase shares in mutual savings and loan associations, and make deposits in or loans to or purchase shares of other credit unions, including corporate central credit unions, if such institutions are either insured by an agency of the federal government or are

eligible under the laws of the United States to apply for such insurance and invest funds as otherwise provided in sections 21-17,100 to 21-17,102.

(15) A credit union may make deposits in, make loans to, or purchase shares of any federal reserve bank or central liquidity facility established under state or federal law.

(16) A credit union may hold membership in associations and organizations controlled by or fostering the interests of credit unions, including a central liquidity facility organized under state or federal law.

(17) A credit union may engage in activities and programs of the federal government, any state, or any agency or political subdivision thereof when approved by the board of directors and not inconsistent with the Credit Union Act.

(18) A credit union may receive funds either as shares or deposits from other credit unions.

(19) A credit union may lease tangible personal property to its members if the credit union acquires no interest in the property prior to its selection by the member.

(20) A credit union may, in whole or in part, purchase, sell, pledge, discount, or otherwise acquire and dispose of obligations of its members in accordance with the rules and regulations promulgated by the director. This subsection shall not apply to participation loans originated pursuant to section 21-1794.

(21) A credit union may, at its own expense, purchase insurance for its members in connection with its members' shares, loans, and other accounts.

(22) A credit union may establish, operate, participate in, and hold membership in systems that allow the transfer of credit union funds and funds of its members by electronic or other means, including, but not limited to, clearing-house associations, data processing and other electronic networks, the federal reserve system, or any other government payment or liquidity program.

(23) A credit union may issue credit cards and debit cards to allow members to obtain access to their shares and extensions of credit if such issuance is not inconsistent with the rules of the department. The department may by rule or regulation allow the use of devices similar to credit cards and debit cards to allow members to access their shares and extensions of credit.

(24) A credit union may service the loans it sells, in whole or in part, to a third party.

(25) In addition to loan and investment powers otherwise authorized by the Credit Union Act, a credit union may organize, invest in, and make loans to corporations or other organizations (a) which engage in activities incidental to the conduct of a credit union or in activities which further or facilitate the purposes of a credit union or (b) which furnish services to credit unions. The director shall determine by rule, regulation, or order the activities and services which fall within the meaning of this subsection. A credit union shall notify the director of any such investment or loan if it would cause the aggregate of such investments and loans to exceed two percent of the credit union's capital and deposits. Such investments and loans may not, in the aggregate, exceed five percent of the capital and deposits of the credit union.

(26) A credit union may purchase, lease, construct, or otherwise acquire and hold land and buildings for the purpose of providing adequate facilities for the transaction of present and potential future business. A credit union may use

such land and buildings for the principal office functions, service facilities, and any other activity in which it engages. A credit union may rent excess space as a source of income. A credit union shall depreciate or appreciate such buildings owned by it in the manner and at the rates the director may prescribe by rule, regulation, or order from time to time. A credit union's investment and contractual obligations, direct, indirect, or contingent, in land and buildings under this subsection shall not exceed seven percent of its capital and deposits without prior approval of the director. This subsection shall not affect the legality of investments in land and buildings made prior to October 1, 1996.

(27) A credit union may, in whole or in part, sell, lease, assign, mortgage, pledge, hypothecate, or otherwise dispose of its land and buildings, including land and buildings obtained as a result of defaults under obligations owing to it.

**Source:** Laws 1996, LB 948, § 40; Laws 1997, LB 137, § 13; Laws 2017, LB375, § 6.  
Effective date August 24, 2017.

#### **21-1741 Safe deposit box service.**

A credit union, by action of its board of directors, may, to the same extent as a bank organized under the laws of this state, operate a safe deposit box service for its members pursuant to sections 8-501 and 8-502.

**Source:** Laws 1996, LB 948, § 41; Laws 1997, LB 137, § 14; Laws 2017, LB375, § 7.  
Effective date August 24, 2017.

#### **21-1770 Loan officer license; opt out.**

The chief executive officer or the credit committee may apply to the department on forms supplied by the department for the licensing of one or more loan officers in order to delegate to such loan officers the power to approve loans and disburse loan funds up to the limits and according to policies established by the credit committee, if any, and in the absence of a credit committee, the board of directors. Such application shall include information deemed necessary by the department and shall be signed by the entire credit committee, if any, and in the absence of a credit committee, the entire board of directors, as well as the new loan officer seeking a license. No person shall act in the capacity of loan officer for more than thirty days until approved by the department unless the credit union has elected to opt out of licensing loan officers on forms supplied by the department.

**Source:** Laws 1996, LB 948, § 70; Laws 1999, LB 107, § 4; Laws 2017, LB140, § 148.  
Operative date August 24, 2017.

#### **21-1782 Joint accounts.**

(1) A credit union member may designate any person or persons to own a share account with the member in joint tenancy with right of survivorship, as a tenant in common, or under any other form of joint ownership permitted by law and allowed by the credit union.

(2) Payment may be made, in whole or in part, to any of the joint owners if an agreement permitting such payment was signed and dated by all persons when the shares were issued or thereafter. Payment made pursuant to this

section discharges the credit union from all claims for amounts paid, whether or not the payment is consistent with the beneficial ownership of the account.

(3) If more than one joint owner seeks credit union membership through a joint account, each prospective member must meet any membership requirements described in the credit union's bylaws.

**Source:** Laws 1996, LB 948, § 82; Laws 2017, LB375, § 8.  
Effective date August 24, 2017.

**21-17,115 Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception.**

Notwithstanding any of the other provisions of the Credit Union Act or any other Nebraska statute, any credit union incorporated under the laws of the State of Nebraska and organized under the provisions of the act shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2017, by a federal credit union doing business in Nebraska on the condition that such rights, powers, privileges, benefits, and immunities shall not relieve such credit union from payment of state taxes assessed under any applicable laws of this state.

**Source:** Laws 1977, LB 246, § 5; Laws 1978, LB 772, § 1; Laws 1979, LB 307, § 1; Laws 1980, LB 793, § 1; Laws 1981, LB 60, § 1; Laws 1982, LB 775, § 2; Laws 1983, LB 143, § 1; Laws 1984, LB 643, § 1; Laws 1985, LB 430, § 1; Laws 1986, LB 963, § 1; Laws 1987, LB 197, § 1; Laws 1988, LB 957, § 1; Laws 1989, LB 126, § 1; Laws 1990, LB 1017, § 1; Laws 1991, LB 97, § 1; Laws 1992, LB 984, § 1; Laws 1993, LB 122, § 1; Laws 1994, LB 878, § 1; Laws 1995, LB 76, § 1; R.S.Supp.,1995, § 21-17,120.01; Laws 1996, LB 948, § 115; Laws 1997, LB 152, § 1; Laws 1998, LB 1321, § 75; Laws 1999, LB 278, § 1; Laws 2000, LB 932, § 27; Laws 2001, LB 53, § 26; Laws 2002, LB 957, § 20; Laws 2003, LB 217, § 32; Laws 2004, LB 999, § 21; Laws 2005, LB 533, § 32; Laws 2006, LB 876, § 24; Laws 2007, LB124, § 21; Laws 2008, LB851, § 17; Laws 2009, LB327, § 15; Laws 2010, LB890, § 14; Laws 2011, LB74, § 5; Laws 2012, LB963, § 22; Laws 2013, LB213, § 13; Laws 2014, LB712, § 3; Laws 2015, LB286, § 3; Laws 2016, LB676, § 3; Laws 2017, LB140, § 149.  
Operative date March 30, 2017.

**21-17,116 Repealed. Laws 2017, LB375, § 10.**

**ARTICLE 19**

**NEBRASKA NONPROFIT CORPORATION ACT**

(n) FOREIGN CORPORATIONS

Section  
21-19,163. Foreign corporation; domestication; procedure; effect.

(n) FOREIGN CORPORATIONS

**21-19,163 Foreign corporation; domestication; procedure; effect.**

If a foreign corporation, which has domesticated pursuant to section 21-19,161, surrenders its foreign corporate charter and files, records, and



publishes notice of amended articles of incorporation in the manner, time, and places required by sections 21-1920, 21-1921, and 21-19,173, such foreign corporation shall thereupon become and be a domestic corporation organized under the Nebraska Nonprofit Corporation Act. The original incorporation date of a foreign corporation which has domesticated in Nebraska shall not be affected by such domestication. The domesticated corporation shall be the same corporation as the one that existed under the laws of the state in which the corporation was previously domiciled. Upon domesticating in Nebraska, the corporation shall continue to exist without interruption and shall maintain its same liabilities and obligations.

**Source:** Laws 1996, LB 681, § 163; Laws 2017, LB476, § 1.  
Effective date August 24, 2017.



**CHAPTER 23**  
**COUNTY GOVERNMENT AND OFFICERS**

Article.

- 2. Counties under Township Organization.
  - (a) Adoption of Township Organization; General Provisions. 23-204.
- 11. Salaries of County Officers. 23-1118.
- 15. Register of Deeds. 23-1503.01.
- 19. County Surveyor and Engineer. 23-1901, 23-1901.02.
- 23. County Employees Retirement. 23-2301 to 23-2334.
- 25. Civil Service System.
  - (a) Counties of More than 300,000 Inhabitants. 23-2503.
  - (b) Counties of 150,000 to 300,000 Inhabitants. 23-2518 to 23-2521.
- 31. County Purchasing. 23-3104.
- 32. County Assessor. 23-3211.
- 34. Public Defender. 23-3406, 23-3408.
- 35. Medical and Multiunit Facilities.
  - (a) General Provisions. 23-3526.
- 36. Industrial Sewer Construction. 23-3637.

**ARTICLE 2**  
**COUNTIES UNDER TOWNSHIP ORGANIZATION**

(a) ADOPTION OF TOWNSHIP ORGANIZATION; GENERAL PROVISIONS

Section

23-204. Supervisor districts; formation; election of supervisors.

(a) ADOPTION OF TOWNSHIP ORGANIZATION; GENERAL PROVISIONS

**23-204 Supervisor districts; formation; election of supervisors.**

On the second Tuesday after the election under section 23-201 adopting township organization in any county, the county attorney, county clerk, and county treasurer of the county shall meet at the county seat of such county and shall, within three days from and after the first day of meeting, divide such county into seven districts to be known as supervisor districts. Such districts shall be divided as nearly as possible with regular boundary lines and in regular and compact form and shapes, and each of such districts shall as nearly as possible have the same number of inhabitants as any other district. No voting precinct shall be divided by any such district, except that in counties having cities of more than one thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census and when such cities have more inhabitants than the average outlying district, the county board shall add enough contiguous territory to such city so that the inhabitants in such city and contiguous territory equal the inhabitants of two of the other districts. The county attorney, county clerk, and county treasurer shall then divide the tract thus segregated into two supervisor districts with population as nearly equal as possible, and when so divided, each of the districts shall elect one supervisor who shall reside in such supervisor district and be nominated and elected by the registered voters residing in that district. If any such city has more than the requisite

inhabitants for two supervisor districts, then sufficient outlying territory may be added to such city to make three supervisor districts. The supervisor in each supervisor district in such city shall reside in such supervisor district and be nominated and elected by the registered voters residing in that supervisor district. The remainder of the county outside of such city districts shall be divided so as to create a total of seven supervisor districts, except that if any county under township organization has gone to an at-large basis for election of supervisors under section 32-554, the board of supervisors of such county may stay on the at-large voting basis.

**Source:** Laws 1895, c. 28, § 4, p. 131; Laws 1911, c. 36, § 1, p. 203; R.S.1913, § 990; Laws 1917, c. 17, § 1, p. 81; C.S.1922, § 890; C.S.1929, § 26-204; R.S.1943, § 23-204; Laws 1947, c. 64, § 2, p. 210; Laws 1973, LB 552, § 3; Laws 1979, LB 331, § 4; Laws 1991, LB 789, § 8; Laws 1994, LB 76, § 537; Laws 2017, LB113, § 34.  
Effective date August 24, 2017.

Cross References

Election of officers, see sections 32-529 and 32-530.

## ARTICLE 11

### SALARIES OF COUNTY OFFICERS

Section

23-1118. Employees of certain counties or municipal counties; retirement benefits; establish; approval of voters; contribution rates; funds; investment; employees, defined; reports.

**23-1118 Employees of certain counties or municipal counties; retirement benefits; establish; approval of voters; contribution rates; funds; investment; employees, defined; reports.**

(1)(a) Unless the county has adopted a retirement system pursuant to section 23-2329, the county board of any county having a population of one hundred fifty thousand inhabitants or more, as determined by the most recent federal decennial census, may, in its discretion and with the approval of the voters, provide retirement benefits for present and future employees of the county. The cost of such retirement benefits shall be funded in accordance with sound actuarial principles with the necessary cost being treated in the county budget in the same way as any other operating expense.

(b) Except as provided in subdivision (c) of this subsection, each employee shall be required to contribute, or have contributed on his or her behalf, an amount at least equal to the county's contribution to the cost of any such retirement program as to service performed after the adoption of such retirement program, but the cost of any benefits based on prior service shall be borne solely by the county.

(c) In a county or municipal county having a population of two hundred fifty thousand or more inhabitants but not more than five hundred thousand inhabitants, as determined by the most recent federal decennial census, the county or municipal county shall establish the employee and employer contribution rates to the retirement program for each year after July 15, 1992. The county or municipal county shall contribute one hundred fifty percent of each

employee's mandatory contribution, and for an employee hired on or after July 1, 2012, the county or municipal county shall contribute at least one hundred percent of each such employee's mandatory contribution, except that an employee receiving a one hundred fifty percent employer contribution under this subdivision may irrevocably elect to switch to a one hundred percent contribution for all future contributions. The combined contributions of the county or municipal county and its employees to the cost of any such retirement program shall not exceed sixteen percent of the employees' salaries.

(2) Before the county board or council provides retirement benefits for the employees of the county or municipal county, such question shall be submitted at a regular general or primary election held within the county or municipal county, and in which election all persons eligible to vote for the officials of the county or municipal county shall be entitled to vote on such question, which shall be submitted in the following language: Shall the county board or council provide retirement benefits for present and future employees of the county or municipal county? If a majority of the votes cast upon such question are in favor of such question, then the county board or council shall be empowered to provide retirement benefits for present and future employees as provided in this section. If such retirement benefits for present and future county and municipal county employees are approved by the voters and authorized by the county board or council, then the funds of such retirement system, in excess of the amount required for current operations as determined by the county board or council, may be invested and reinvested in the class of securities and investments described in section 30-3209.

(3) As used in this section, employees shall mean all persons or officers devoting more than twenty hours per week to employment by the county or municipal county, all elected officers of the county or municipal county, and such other persons or officers as are classified from time to time as permanent employees by the county board or council.

(4) The county or municipal county may pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the county or municipal county shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the Internal Revenue Code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The county or municipal county shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The county or municipal county shall pick up these contributions by a salary deduction either through a reduction in the cash salary of the member or a combination of a reduction in salary and offset against a future salary increase. Member contributions picked up shall be treated in the same manner and to the same extent as member contributions made prior to the date picked up.

(5) Beginning December 31, 1998, through December 31, 2017:

(a) The chairperson of the county board or council with a retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board a report on such plan and shall submit copies of such report to the Auditor of Public Accounts.

The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and
- (viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits; and

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the county board of a county or council of the municipal county with a retirement plan established pursuant to this section shall cause to be prepared an annual report and the chairperson shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the county board or council does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the county or municipal county. All costs of the audit shall be paid by the county or municipal county. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

**Source:** Laws 1961, c. 97, § 1, p. 327; Laws 1967, c. 257, § 3, p. 680; Laws 1967, c. 129, § 1, p. 412; Laws 1984, LB 216, § 1; Laws 1985, LB 353, § 2; Laws 1992, LB 672, § 30; Laws 1995, LB 369, § 1; Laws 1995, LB 574, § 30; Laws 1998, LB 1191, § 22; Laws 1999, LB 795, § 10; Laws 2001, LB 142, § 31; Laws 2011, LB474, § 10; Laws 2012, LB867, § 1; Laws 2014, LB759, § 15;

Laws 2015, LB41, § 1; Laws 2015, LB126, § 1; Laws 2017, LB415, § 10.

Effective date May 24, 2017.

**ARTICLE 15**  
**REGISTER OF DEEDS**

Section

23-1503.01. Instrument submitted for recording; requirements.

**23-1503.01 Instrument submitted for recording; requirements.**

(1) Any instrument submitted for recording in the office of the register of deeds shall contain a blank space at the top of the first page which is at least three inches by eight and one-half inches in size for recording information required by section 23-1510 by the register of deeds. If this space or the information required by such section is not provided, the register of deeds may add a page or use the back side of an existing page and charge for the page a fee established by section 33-109 for the recording of an instrument. No attachment or affirmation shall be used in any way to cover any information or printed material on the instrument.

(2) Printed forms primarily intended to be used for recordation purposes shall have a one-inch margin on the two vertical sides and a one-inch margin on the bottom of the page. Nonessential information such as page numbers or customer notations may be placed within the side and bottom margins.

(3) All instruments submitted for recording shall be on paper measuring at least eight and one-half inches by eleven inches and not larger than eight and one-half inches by fourteen inches. The instrument shall be printed, typewritten, or computer-generated in black ink on white paper of not less than twenty-pound weight without watermarks or other visible inclusions. The instrument shall be sufficiently legible to allow for a readable copy to be reproduced using the method of reproduction used by the register of deeds. A font size of at least eight points shall be presumed to be sufficiently legible. Each signature on an instrument shall be in black or dark blue ink and of sufficient color and clarity to ensure that the signature is readable when the instrument is reproduced. The signature may be a digital signature or an electronic signature. The name of each party to the instrument shall be typed, printed, or stamped beneath the original signature. An embossed or inked stamp shall not cover or otherwise materially interfere with any part of the instrument.

(4) This section does not apply to:

- (a) Instruments signed before August 27, 2011;
- (b) Instruments executed outside of the United States;
- (c) Certified copies of instruments issued by governmental agencies, including vital records;
- (d) Instruments signed by an original party who is incapacitated or deceased at the time the instruments are presented for recording;
- (e) Instruments formatted to meet court requirements;
- (f) Federal and state tax liens;
- (g) Forms prescribed by the Uniform Commercial Code; and
- (h) Plats, surveys, or drawings related to plats or surveys.

(5) The changes made to this section by Laws 2011, LB254, do not affect the duty of a register of deeds to file an instrument presented for recordation as set forth in sections 23-1506 and 76-237.

**Source:** Laws 1990, LB 1153, § 52; Laws 1995, LB 288, § 1; Laws 2011, LB254, § 1; Laws 2017, LB535, § 1.  
Effective date August 24, 2017.

## ARTICLE 19

### COUNTY SURVEYOR AND ENGINEER

#### Section

23-1901. County surveyor; county engineer; qualifications; powers and duties.

23-1901.02. County surveyor; deputy; appointment; oath; duties.

#### **23-1901 County surveyor; county engineer; qualifications; powers and duties.**

(1) It shall be the duty of the county surveyor to make or cause to be made all surveys within his or her county that the county surveyor may be called upon to make and record the same.

(2) In all counties having a population of at least sixty thousand inhabitants but less than one hundred fifty thousand inhabitants, the county surveyor shall be ex officio county engineer and shall be either a professional engineer as provided in the Engineers and Architects Regulation Act or a registered land surveyor as provided in the Land Surveyors Regulation Act or both. In such counties, the office of surveyor shall be full time.

In counties having a population of one hundred fifty thousand inhabitants or more, a county engineer shall be a professional engineer as provided in the act and shall be elected as provided in section 32-526.

(3) The county engineer or ex officio county engineer shall:

(a) Prepare all plans, specifications, and detail drawings for the use of the county in advertising and letting all contracts for the building and repair of bridges, culverts, and all public improvements upon the roads;

(b) Make estimates of the cost of all such contemplated public improvements, make estimates of all material required for such public improvements, inspect the material and have the same measured and ascertained, and report to the county board whether the same is in accordance with its requirements;

(c) Superintend the construction of all such public improvements and inspect and require that the same shall be done according to contract;

(d) Make estimates of the cost of all labor and material which shall be necessary for the construction of all bridges and improvements upon public highways, inspect all of the work and materials placed in any such public improvements, and make a report in writing to the county board with a statement in regard to whether the same comply with the plans, specifications, and detail drawings of the county board prepared for such work or improvements and under which the contract was let; and

(e) Have charge and general supervision of work or improvements authorized by the county board, inspect all materials, direct the work, and make a report of each piece of work to the county board.

The county engineer or surveyor shall also have such other and further powers as are necessarily incident to the general powers granted.



(4) The county surveyor 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.

(5) In counties having a population of one hundred fifty thousand inhabitants or more, the county engineer shall appoint a full-time county surveyor. The county surveyor shall perform all the duties prescribed in sections 23-1901 to 23-1913 and any other duties assigned to him or her by the county engineer. The county surveyor shall be a registered land surveyor as provided in the Land Surveyors Regulation Act.

**Source:** Laws 1879, § 127, p. 386; Laws 1905, c. 50, § 1, p. 295; R.S.1913, § 5685; Laws 1921, c. 141, § 1, p. 606; C.S.1922, § 5015; C.S.1929, § 26-1601; Laws 1939, c. 28, § 16, p. 154; C.S.Supp.,1941, § 26-1601; R.S.1943, § 23-1901; Laws 1969, c. 170, § 1, p. 747; Laws 1982, LB 127, § 2; Laws 1986, LB 512, § 1; Laws 1990, LB 821, § 14; Laws 1994, LB 76, § 543; Laws 1997, LB 622, § 58; Laws 2015, LB138, § 1; Laws 2017, LB200, § 1.

Effective date August 24, 2017.

**Cross References**

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

**Land Surveyors Regulation Act**, see section 81-8,108.01.

**23-1901.02 County surveyor; deputy; appointment; oath; duties.**

The county surveyor may appoint a deputy for whose acts he or she will be responsible. The surveyor may not appoint the county treasurer, sheriff, register of deeds, or clerk as deputy.

In counties having a population of sixty thousand but less than one hundred fifty thousand, if the county surveyor is a professional engineer, he or she shall appoint as deputy a registered land surveyor or, if the county surveyor is a registered land surveyor, he or she shall appoint as deputy a professional engineer. This requirement shall not apply if the county surveyor is both a professional engineer and a registered land surveyor.

The appointment shall be in writing and revocable in writing by the surveyor. Both the appointment and revocation shall be filed and kept in the office of the county clerk.

The deputy shall take the same oath as the surveyor which shall be endorsed upon and filed with the certificate of appointment. The surveyor may require a bond of the deputy.

In the absence or disability of the surveyor, the deputy shall perform the duties of the surveyor pertaining to the office, but when the surveyor is required to act in conjunction with or in place of another officer, the deputy cannot act in the surveyor's place.

**Source:** Laws 1990, LB 821, § 15; Laws 2017, LB200, § 2.  
Effective date August 24, 2017.

**ARTICLE 23**

**COUNTY EMPLOYEES RETIREMENT**

Section 23-2301. Terms, defined.

Section

- 23-2308.01. Cash balance benefit; election; effect; administrative services agreements; authorized.
- 23-2315.01. Retirement for disability; application; when; medical examination; waiver.
- 23-2317. Retirement system; future service retirement benefit; when payable; how computed; selection of annuity; board; certain required minimum distributions; election authorized.
- 23-2323.01. Reemployment; military service; contributions; effect.
- 23-2334. Retirement; prior service retirement benefit; how determined.

**23-2301 Terms, defined.**

For purposes of the County Employees Retirement Act, unless the context otherwise requires:

(1)(a) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of an annuity payment.

(b) For a member hired prior to January 1, 2018, the mortality assumption used for purposes of converting the member cash balance account shall be the 1994 Group Annuity Mortality Table using a unisex rate that is fifty percent male and fifty percent female. For purposes of converting the member cash balance account attributable to contributions made prior to January 1, 1984, that were transferred pursuant to the act, the 1994 Group Annuity Mortality Table for males shall be used.

(c) For a member hired on or after January 1, 2018, or rehired on or after January 1, 2018, after termination of employment and being paid a retirement benefit or taking a refund of contributions, the mortality assumption used for purposes of converting the member cash balance account shall be a unisex mortality table that is recommended by the actuary and approved by the board following an actuarial experience study, a benefit adequacy study, or a plan valuation. The mortality table and actuarial factors in effect on the member's retirement date will be used to calculate the actuarial equivalency of any retirement benefit;

(2) Annuity means equal monthly payments provided by the retirement system to a member or beneficiary under forms determined by the board beginning the first day of the month after an annuity election is received in the office of the Nebraska Public Employees Retirement Systems or the first day of the month after the employee's termination of employment, whichever is later. The last payment shall be at the end of the calendar month in which the member dies or in accordance with the payment option chosen by the member;

(3) Annuity start date means the date upon which a member's annuity is first effective and shall be the first day of the month following the member's termination or following the date the application is received by the board, whichever is later;

(4) Cash balance benefit means a member's retirement benefit that is equal to an amount based on annual employee contribution credits plus interest credits and, if vested, employer contribution credits plus interest credits and dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;

(5)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements,

cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(6) Date of adoption of the retirement system by each county means the first day of the month next following the date of approval of the retirement system by the county board or January 1, 1987, whichever is earlier;

(7) Date of disability means the date on which a member is determined by the board to be disabled;

(8) Defined contribution benefit means a member's retirement benefit from a money purchase plan in which member benefits equal annual contributions and earnings pursuant to section 23-2309 and, if vested, employer contributions and earnings pursuant to section 23-2310;

(9) Disability means an inability to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which was initially diagnosed or became disabling while the member was an active participant in the plan and which can be expected to result in death or be of a long-continued and indefinite duration;

(10) Employee means all persons or officers who are employed by a county of the State of Nebraska on a permanent basis, persons or officers employed by or serving in a municipal county formed by at least one county participating in the retirement system, persons employed as provided in section 2-1608, all elected officers of a county, and such other persons or officers as are classified from time to time as permanent employees by the county board of the county by which they are employed, except that employee does not include judges, employees or officers of any county having a population in excess of two hundred fifty thousand inhabitants as determined by the most recent federal decennial census, or, except as provided in section 23-2306, persons making contributions to the School Employees Retirement System of the State of Nebraska;

(11) Employee contribution credit means an amount equal to the member contribution amount required by section 23-2307;

(12) Employer contribution credit means an amount equal to the employer contribution amount required by section 23-2308;

(13) Final account value means the value of a member's account on the date the account is either distributed to the member or used to purchase an annuity from the plan, which date shall occur as soon as administratively practicable after receipt of a valid application for benefits, but no sooner than forty-five days after the member's termination;

(14) Five-year break in service means a period of five consecutive one-year breaks in service;

(15) Full-time employee means an employee who is employed to work one-half or more of the regularly scheduled hours during each pay period;

(16) Future service means service following the date of adoption of the retirement system;

(17) Guaranteed investment contract means an investment contract or account offering a return of principal invested plus interest at a specified rate. For investments made after July 19, 1996, guaranteed investment contract does not include direct obligations of the United States or its instrumentalities, bonds, participation certificates or other obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or collateralized mortgage obligations and other derivative securities. This subdivision shall not be construed to require the liquidation of investment contracts or accounts entered into prior to July 19, 1996;

(18) Hire date or date of hire means the first day of compensated service subject to retirement contributions;

(19) Interest credit rate means the greater of (a) five percent or (b) the applicable federal mid-term rate, as published by the Internal Revenue Service as of the first day of the calendar quarter for which interest credits are credited, plus one and one-half percent, such rate to be compounded annually;

(20) Interest credits means the amounts credited to the employee cash balance account and the employer cash balance account at the end of each day. Such interest credit for each account shall be determined by applying the daily portion of the interest credit rate to the account balance at the end of the previous day. Such interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account after a member ceases to be an employee, except that no such credit shall be made with respect to the employee cash balance account and the employer cash balance account for any day beginning on or after the member's date of final account value. If benefits payable to the member's surviving spouse or beneficiary are delayed after the member's death, interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account until such surviving spouse or beneficiary commences receipt of a distribution from the plan;

(21) Member cash balance account means an account equal to the sum of the employee cash balance account and, if vested, the employer cash balance account and dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;

(22) One-year break in service means a plan year during which the member has not completed more than five hundred hours of service;

(23) Participation means qualifying for and making the required deposits to the retirement system during the course of a plan year;

(24) Part-time employee means an employee who is employed to work less than one-half of the regularly scheduled hours during each pay period;

(25) Plan year means the twelve-month period beginning on January 1 and ending on December 31;

(26) Prior service means service prior to the date of adoption of the retirement system;

(27) Regular interest means the rate of interest earned each calendar year as determined by the retirement board in conformity with actual and expected earnings on the investments through December 31, 1985;

(28) Required contribution means the deduction to be made from the compensation of employees as provided in the act;

(29) Retirement means qualifying for and accepting the retirement benefit granted under the act after terminating employment;

(30) Retirement application means the form approved and provided by the retirement system for acceptance of a member's request for either regular or disability retirement;

(31) Retirement board or board means the Public Employees Retirement Board;

(32) Retirement date means (a) the first day of the month following the date upon which a member's request for retirement is received on a retirement application if the member is eligible for retirement and has terminated employment or (b) the first day of the month following termination of employment if the member is eligible for retirement and has filed an application but has not yet terminated employment;

(33) Retirement system means the Retirement System for Nebraska Counties;

(34) Service means the actual total length of employment as an employee and is not deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under section 23-2315;

(35) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits;

(36) Termination of employment occurs on the date on which a county which is a member of the retirement system determines that its employer-employee relationship with an employee is dissolved. The county shall notify the board of the date on which such a termination has occurred. Termination of employment does not occur if an employee whose employer-employee relationship with a county is dissolved enters into an employer-employee relationship with the same or another county which participates in the Retirement System for Nebraska Counties and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased with the county and the date when the employer-employee relationship commenced with the same or another county which qualifies the employee for participation in the plan. It is the responsibility of the employer that is involved in the

termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 23-2319, the board shall require the member who has received such benefit to repay the benefit to the retirement system; and

(37) Vesting credit means credit for years, or a fraction of a year, of participation in another Nebraska governmental plan for purposes of determining vesting of the employer account.

**Source:** Laws 1965, c. 94, § 1, p. 402; Laws 1969, c. 172, § 1, p. 750; Laws 1973, LB 216, § 1; Laws 1974, LB 905, § 1; Laws 1975, LB 47, § 1; Laws 1975, LB 45, § 1; Laws 1984, LB 216, § 2; Laws 1985, LB 347, § 1; Laws 1985, LB 432, § 1; Laws 1986, LB 311, § 2; Laws 1991, LB 549, § 1; Laws 1993, LB 417, § 1; Laws 1994, LB 833, § 1; Laws 1995, LB 369, § 2; Laws 1996, LB 847, § 2; Laws 1996, LB 1076, § 1; Laws 1996, LB 1273, § 14; Laws 1997, LB 624, § 1; Laws 1998, LB 1191, § 23; Laws 1999, LB 703, § 1; Laws 2000, LB 1192, § 1; Laws 2001, LB 142, § 32; Laws 2002, LB 407, § 1; Laws 2002, LB 687, § 3; Laws 2003, LB 451, § 2; Laws 2004, LB 1097, § 2; Laws 2006, LB 366, § 2; Laws 2006, LB 1019, § 1; Laws 2011, LB509, § 2; Laws 2012, LB916, § 4; Laws 2013, LB263, § 2; Laws 2015, LB41, § 2; Laws 2017, LB415, § 11.

Effective date May 24, 2017.

**Cross References**

**Spousal Pension Rights Act**, see section 42-1101.

**23-2308.01 Cash balance benefit; election; effect; administrative services agreements; authorized.**

(1) It is the intent of the Legislature that, in order to improve the competitiveness of the retirement plan for county employees, a cash balance benefit shall be added to the County Employees Retirement Act on and after January 1, 2003. Each member who is employed and participating in the retirement system prior to January 1, 2003, may either elect to continue participation in the defined contribution benefit as provided in the act prior to January 1, 2003, or elect to participate in the cash balance benefit as set forth in this section. An active member shall make a one-time election beginning September 1, 2012, through October 31, 2012, in order to participate in the cash balance benefit. If no such election is made, the member shall be treated as though he or she elected to continue participating in the defined contribution benefit as provided in the act prior to January 1, 2003. Members who elect to participate in the cash balance benefit beginning September 1, 2012, through October 31, 2012, shall commence participation in the cash balance benefit on January 2, 2013. Any member who made the election prior to April 7, 2012, does not have to make another election of the cash balance benefit beginning September 1, 2012, through October 31, 2012.

(2) For a member employed and participating in the retirement system beginning on and after January 1, 2003, or a member employed and participating in the retirement system on January 1, 2003, who, prior to April 7, 2012, or

beginning September 1, 2012, through October 31, 2012, elects to convert his or her employee and employer accounts to the cash balance benefit:

(a) Except as provided in subdivision (2)(b) of section 23-2319.01, the employee cash balance account within the County Employees Retirement Fund shall, at any time, be equal to the following:

(i) The initial employee account balance, if any, transferred from the defined contribution plan account described in section 23-2309; plus

(ii) Employee contribution credits deposited in accordance with section 23-2307; plus

(iii) Interest credits credited in accordance with subdivision (20) of section 23-2301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317; and

(b) The employer cash balance account shall, at any time, be equal to the following:

(i) The initial employer account balance, if any, transferred from the defined contribution plan account described in section 23-2310; plus

(ii) Employer contribution credits deposited in accordance with section 23-2308; plus

(iii) Interest credits credited in accordance with subdivision (20) of section 23-2301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317.

(3) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the counties and their participating employees. The board may develop a schedule for the allocation of the administrative services agreements costs for accounting or record-keeping services and may assess the costs so that each member pays a reasonable fee as determined by the board.

**Source:** Laws 2002, LB 687, § 6; Laws 2003, LB 451, § 4; Laws 2005, LB 364, § 2; Laws 2006, LB 366, § 5; Laws 2006, LB 1019, § 3; Laws 2007, LB328, § 1; Laws 2009, LB188, § 2; Laws 2010, LB950, § 2; Laws 2011, LB509, § 6; Laws 2012, LB916, § 6; Laws 2017, LB415, § 12.

Effective date May 24, 2017.

**23-2315.01 Retirement for disability; application; when; medical examination; waiver.**

(1) Any member, disregarding the length of service, may be retired as a result of disability either upon his or her own application or upon the application of his or her employer or any person acting in his or her behalf. Before any member may be so retired, a medical examination shall be made at the expense of the retirement system, which examination shall be conducted by a disinterested physician legally authorized to practice medicine under the laws of the state in which he or she practices, such physician to be selected by the retirement board, and the physician shall certify to the board that the member

should be retired because he or she suffers from an inability to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which was initially diagnosed or became disabling while the member was an active participant in the plan and which can be expected to result in death or to be of long-continued and indefinite duration. The medical examination may be waived if, in the judgment of the retirement board, extraordinary circumstances exist which preclude substantial gainful activity by the member. Such circumstances shall include hospice placement or similar confinement for a terminal illness or injury. The application for disability retirement shall be made within one year of termination of employment.

(2) The retirement board may require any disability beneficiary who has not attained the age of fifty-five years to undergo a medical examination at the expense of the board once each year. Should any disability beneficiary refuse to undergo such an examination, his or her disability retirement benefit may be discontinued by the board.

(3) The retirement board may adopt and promulgate rules and regulations and prescribe the necessary forms to carry out this section.

**Source:** Laws 1975, LB 47, § 3; Laws 1997, LB 623, § 5; Laws 2001, LB 408, § 5; Laws 2010, LB950, § 6; Laws 2017, LB415, § 13.  
Effective date May 24, 2017.

**23-2317 Retirement system; future service retirement benefit; when payable; how computed; selection of annuity; board; certain required minimum distributions; election authorized.**

(1) The future service retirement benefit shall be an annuity, payable monthly with the first payment made no earlier than the annuity start date, which shall be the actuarial equivalent of the retirement value as specified in section 23-2316 based on factors determined by the board, except that gender shall not be a factor when determining the amount of such payments pursuant to subsection (2) of this section.

Except as provided in section 42-1107, at any time before the annuity start date, the retiring employee may choose to receive his or her annuity either in the form of an annuity as provided under subsection (4) of this section or any optional form that is determined by the board.

Except as provided in section 42-1107, in lieu of the future service retirement annuity, a retiring employee may receive a benefit not to exceed the amount in his or her employer and employee accounts as of the date of final account value payable in a lump sum and, if the employee chooses not to receive the entire amount in such accounts, an annuity equal to the actuarial equivalent of the remainder of the retirement value, and the employee may choose any form of such annuity as provided for by the board.

In any case, the amount of the monthly payment shall be such that the annuity chosen shall be the actuarial equivalent of the retirement value as specified in section 23-2316 except as provided in this section.

(2) Except as provided in subsection (4) of this section, the monthly income payable to a member retiring on or after January 1, 1984, shall be as follows:

He or she shall receive at retirement the amount which may be purchased by the accumulated contributions based on annuity rates in effect on the annuity start date which do not utilize gender as a factor, except that such amounts



shall not be less than the retirement income which can be provided by the sum of the amounts derived pursuant to subdivisions (a) and (b) of this subsection as follows:

(a) The income provided by the accumulated contributions made prior to January 1, 1984, based on male annuity purchase rates in effect on the date of purchase; and

(b) The income provided by the accumulated contributions made on and after January 1, 1984, based on the annuity purchase rates in effect on the date of purchase which do not use gender as a factor.

(3) Any amount, in excess of contributions, which may be required in order to purchase the retirement income specified in subsection (2) of this section shall be withdrawn from the County Equal Retirement Benefit Fund.

(4)(a) The normal form of payment shall be a single life annuity with five-year certain, which is an annuity payable monthly during the remainder of the member's life with the provision that, in the event of 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 that is recommended by the actuary and approved by the board following an actuarial experience study, a benefit adequacy study, or a plan valuation. The interest rate and actuarial factors in effect on the member's retirement date will be used to calculate actuarial equivalency of any retirement benefit. Such interest rate may be, but is not required to be, equal to the assumed rate of return.

For an employee who is a member prior to January 1, 2003, who has elected not to participate in the cash balance benefit pursuant to section 23-2308.01, and who, at the time of retirement, chooses the annuity option rather than the lump-sum option, his or her employee and employer accounts as of the date of final account value shall be converted to an annuity using an interest rate that is equal to the lesser of (i) the Pension Benefit Guaranty Corporation initial interest rate for valuing annuities for terminating plans as of the beginning of the year during which payment begins plus three-fourths of one percent or (ii) the interest rate used to calculate the retirement benefits for cash balance plan members.

(b) For the calendar year beginning January 1, 2003, and each calendar year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the

actuarially required funding rate is equal to the normal cost rate plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level-payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of January 1, 2003, if any, shall be amortized over a twenty-five-year period. During each subsequent actuarial valuation, changes in the unfunded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a twenty-five-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the County Employees Retirement Act, there shall be a supplemental appropriation sufficient to pay for the difference between the actuarially required contribution rate and the rate of all contributions required pursuant to the act.

(c) If the unfunded accrued actuarial liability under the entry age actuarial cost method is less than zero on an actuarial valuation date, and on the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board may elect to pay a dividend to all members participating in the cash balance option in an amount that would not increase the actuarial contribution rate above ninety percent of the actual contribution rate. Dividends shall be credited to the employee cash balance account and the employer cash balance account based on the account balances on the actuarial valuation date. In the event a dividend is granted and paid after the actuarial valuation date, interest for the period from the actuarial valuation date until the dividend is actually paid shall be paid on the dividend amount. The interest rate shall be the interest credit rate earned on regular contributions.

(5) At the option of the retiring member, any lump sum or annuity provided under this section or section 23-2334 may be deferred to commence at any time, except that no benefit shall be deferred later than April 1 of the year following the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the county. Such election by the retiring member may be made at any time prior to the commencement of the lump-sum or annuity payments.

(6) A participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Internal Revenue Code, and who would have satisfied that requirement by receiving distributions that are either equal to the 2009 required minimum distributions or one or more payments in a series of substantially equal distributions, including the 2009 required minimum distribution, made at least annually and expected to last for the life or life expectancy of the participant, the joint lives or joint life expectancy of the participant and the participant's designated beneficiary, or for a period of at least ten years, shall receive those distributions for 2009 unless the participant or beneficiary chooses

es not to receive such distributions. Participants and beneficiaries shall be given the opportunity to elect to stop receiving the distributions described in this subsection.

**Source:** Laws 1965, c. 94, § 17, p. 407; Laws 1979, LB 416, § 2; Laws 1981, LB 462, § 2; Laws 1983, LB 210, § 1; Laws 1985, LB 347, § 8; Laws 1986, LB 311, § 6; Laws 1987, LB 60, § 2; Laws 1992, LB 543, § 1; Laws 1993, LB 417, § 3; Laws 1996, LB 1273, § 15; Laws 2002, LB 687, § 12; Laws 2003, LB 451, § 8; Laws 2006, LB 1019, § 4; Laws 2007, LB328, § 3; Laws 2009, LB188, § 4; Laws 2012, LB916, § 9; Laws 2013, LB263, § 7; Laws 2017, LB415, § 14.

Effective date May 24, 2017.

**23-2323.01 Reemployment; military service; contributions; effect.**

(1)(a) For military service beginning on or after December 12, 1994, but before January 1, 2018, any employee who, while an employee, entered into and served in the armed forces of the United States and who within ninety days after honorable discharge or honorable separation from active duty again became an employee shall be credited, for the purposes of section 23-2315, with all the time actually served in the armed forces as if such person had been an employee throughout such service in the armed forces pursuant to the terms and conditions of subdivision (b) of this subsection.

(b) Under such rules and regulations as the retirement board adopts and promulgates, an employee who is reemployed on or after December 12, 1994, pursuant to 38 U.S.C. 4301 et seq., may pay to the retirement system an amount equal to the sum of all deductions which would have been made from the employee's compensation during such period of military service. Payment shall be made within the period required by law, not to exceed five years. To the extent that payment is made, (i) the employee shall be treated as not having incurred a break in service by reason of the employee's period of military service, (ii) the period of military service shall be credited for the purposes of determining the nonforfeitability of the employee's accrued benefits and the accrual of benefits under the plan, and (iii) the employer shall allocate the amount of employer contributions to the employee's employer account in the same manner and to the same extent the allocation occurs for other employees during the period of service. For purposes of employee and employer contributions under this section, the employee's compensation during the period of military service shall be the rate the employee would have received but for the military service or, if not reasonably determinable, the average rate the employee received during the twelve-month period immediately preceding military service.

(c) The employer shall pick up the employee contributions made through irrevocable payroll deduction authorizations pursuant to this subsection, and the contributions so picked up shall be treated as employer contributions in the same manner as contributions picked up under section 23-2307.

(2)(a) For military service beginning on or after January 1, 2018, any employee who is reemployed pursuant to 38 U.S.C. 4301 et seq., shall be treated as not having incurred a break in service by reason of the employee's period of military service. Such military service shall be credited for purposes

of determining the nonforfeitability of the employee's accrued benefits and the accrual of benefits under the plan.

(b) The county employing the employee shall be liable for funding any obligation of the plan to provide benefits based upon such period of military service. To satisfy the liability, the county employing the employee shall pay to the retirement system an amount equal to:

(i) The sum of the employee and employer contributions that would have been paid during such period of military service; and

(ii) Any actuarial costs necessary to fund the obligation of the plan to provide benefits based upon such period of military service. For the purposes of determining the amount of such liability and obligation of the plan, earnings and forfeitures, gains and losses, regular interest, interest credits, or dividends that would have accrued on the employee and employer contributions that are paid by the employer pursuant to this section shall not be included.

(c) The amount required pursuant to subdivision (b) of this subsection shall be paid to the retirement system as soon as reasonably practicable following the date of reemployment but must be paid within eighteen months of the date the board notifies the employer of the amount due. If the employer fails to pay the required amount within such eighteen-month period, then the employer is also responsible for any actuarial costs and interest on actuarial costs that accrue from eighteen months after the date the employer is notified by the board until the date the amount is paid.

(d) The retirement board may adopt and promulgate rules and regulations to carry out this subsection, including, but not limited to, rules and regulations on:

(i) How and when the employee and employer must notify the retirement system of a period of military service;

(ii) The acceptable methods of payment;

(iii) Determining the service and compensation upon which the contributions must be made;

(iv) Accelerating the payment from the employer due to unforeseen circumstances that occur before payment is made pursuant to this section, including, but not limited to, the employee's termination or retirement or the employer's reorganization, consolidation, merger, or closing; and

(v) The documentation required to substantiate that the employee was reemployed pursuant to 38 U.S.C. 4301 et seq.

(3) This section only applies to military service that falls within the definition of uniformed service under 38 U.S.C. 4301 et seq. Military service does not include service provided pursuant to sections 55-101 to 55-181.

**Source:** Laws 1996, LB 847, § 7; Laws 1998, LB 1191, § 29; Laws 1999, LB 703, § 4; Laws 2017, LB415, § 15.  
Effective date May 24, 2017.

### **23-2334 Retirement; prior service retirement benefit; how determined.**

The prior service retirement benefit shall be a straight life annuity, payable monthly, quarterly, semiannually, or annually with the first payment made as of the annuity start date, in an amount determined in accordance with section 23-2333. No prior service retirement benefit shall be paid to any person who terminates his or her employment unless such person has been continuously

employed by the county for ten or more years immediately prior to termination. An employee meeting such requirement and who terminates his or her employment shall not receive a prior service benefit determined in accordance with section 23-2333 prior to attaining age sixty-five.

Prior service retirement benefits shall be paid directly by the county to the retired employee.

**Source:** Laws 1965, c. 94, § 18, p. 408; Laws 1973, LB 352, § 1; Laws 1975, LB 32, § 2; R.S.1943, (1991), § 23-2318; Laws 1994, LB 833, § 10; Laws 2003, LB 451, § 13; Laws 2017, LB415, § 16. Effective date May 24, 2017.

## ARTICLE 25

### CIVIL SERVICE SYSTEM

#### (a) COUNTIES OF MORE THAN 300,000 INHABITANTS

Section

23-2503. Civil Service Commission; formation.

#### (b) COUNTIES OF 150,000 TO 300,000 INHABITANTS

23-2518. Terms, defined.

23-2519. County service; classified and unclassified service, defined; exemptions.

23-2520. Personnel office; created; county personnel officer; board; members; costs of administering.

23-2521. Personnel policy board; members; qualifications; appointment; term; removal; chairperson; meetings; quorum.

#### (a) COUNTIES OF MORE THAN 300,000 INHABITANTS

##### **23-2503 Civil Service Commission; formation.**

In any county having a population of four hundred thousand inhabitants or more as determined by the most recent federal decennial census, there shall be a Civil Service Commission which shall be formed as provided in sections 23-2501 to 23-2516. A county shall comply with this section within six months after a determination that the population has reached four hundred thousand inhabitants or more as determined by the most recent federal decennial census.

**Source:** Laws 1971, LB 921, § 3; Laws 2016, LB742, § 9; Laws 2017, LB508, § 1. Effective date August 24, 2017.

#### (b) COUNTIES OF 150,000 TO 300,000 INHABITANTS

##### **23-2518 Terms, defined.**

For purposes of the County Civil Service Act:

(1) Appointing authority means elected officials and appointed department directors authorized to make appointments in the county service;

(2) Board of county commissioners means the board of commissioners of any county with a population of one hundred fifty thousand or more but less than four hundred thousand inhabitants as determined by the most recent federal decennial census;

(3) Classified service means the positions in the county service to which the act applies;

(4) County personnel officer means the employee designated by the board of county commissioners to administer the act;

(5) Department means a functional unit of the county government headed by an elected official or established by the board of county commissioners;

(6) Deputy means an individual who serves as the first assistant to and at the pleasure of an elected official;

(7) Elected official means an officer elected by the popular vote of the people and known as the county attorney, public defender, county sheriff, county treasurer, clerk of the district court, register of deeds, county clerk, county assessor, or county surveyor;

(8) Internal Revenue Code means the Internal Revenue Code as defined in section 49-801.01;

(9) Political subdivision means a village, city of the second class, city of the first class, city of the primary class, city of the metropolitan class, county, school district, public power district, or any other unit of local government including entities created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. Political subdivision does not include a contractor with the county;

(10) State means the State of Nebraska;

(11) Straight-time rate of pay means the rate of pay in effect on the date of transfer of employees stated in the resolution by the county board requesting the transfer; and

(12) Transferred employee means an employee of the state or a political subdivision transferred to the county pursuant to a request for such transfer made by the county under section 23-2518.01.

**Source:** Laws 1974, LB 995, § 2; Laws 1999, LB 272, § 11; Laws 2006, LB 808, § 8; Laws 2016, LB742, § 11; Laws 2017, LB508, § 2. Effective date August 24, 2017.

#### Cross References

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

### **23-2519 County service; classified and unclassified service, defined; exemptions.**

(1) The county service shall be divided into the classified service and the unclassified service.

(2) All officers and positions of the county shall be in the classified service unless specifically designated as being in the unclassified service established by the County Civil Service Act. All county employees who have permanent status under any other act prior to the passage of the County Civil Service Act shall have status under the act without further qualification.

(3) Positions in the unclassified service shall not be governed by the act and shall include the following:

(a) County officers elected by popular vote and persons appointed to fill vacancies in such elective offices;

(b) The county personnel officer and the administrative assistant to the board of county commissioners;

(c) Bailiffs;

(d) Department heads and one principal assistant or chief deputy for each county department. When more than one principal assistant or chief deputy is mandated by law, all such positions shall be in the unclassified service;

(e) Members of boards and commissions appointed by the board of county commissioners;

(f) Persons employed in a professional or scientific capacity to make or conduct a temporary and special investigation or examination on behalf of the board of county commissioners;

(g) Attorneys;

(h) Physicians;

(i) Employees of an emergency management organization;

(j) Deputy sheriffs; and

(k) Law clerks and students employed by the county attorney or public defender.

(4) Nothing in the act shall be construed as precluding the appointing authority from filling any positions in the unclassified service in the manner in which positions in the classified service are filled.

**Source:** Laws 1974, LB 995, § 3; Laws 1991, LB 117, § 1; Laws 1996, LB 43, § 4; Laws 2006, LB 808, § 13; Laws 2017, LB80, § 1.  
Effective date August 24, 2017.

**23-2520 Personnel office; created; county personnel officer; board; members; costs of administering.**

There is hereby created a personnel office in the office of the board of county commissioners, the executive head of which shall be the county personnel officer. In such office there shall be a personnel policy board with members appointed pursuant to section 23-2521 and with powers and duties provided in the County Civil Service Act. The board of county commissioners shall make appropriations from the general fund to meet the estimated costs of administering the act.

**Source:** Laws 1974, LB 995, § 4; Laws 1987, LB 198, § 1; Laws 2006, LB 808, § 14; Laws 2017, LB508, § 3.  
Effective date August 24, 2017.

**23-2521 Personnel policy board; members; qualifications; appointment; term; removal; chairperson; meetings; quorum.**

(1) The members of the personnel policy board shall be persons in sympathy with the application of merit principles to public employment and who are not otherwise employed by the county, except that the member employed by the county if serving on such board on May 6, 1987, shall continue to serve until the term of such member expires. No member shall hold during his or her term, or shall have held for a period of one year prior thereto, any political office or a position as officer or employee of a political organization.

(2)(a) Prior to January 1, 2018, two members of the board shall be appointed by the board of county commissioners, two members shall be appointed by the elected department heads, and two members shall be appointed by classified employees who are covered by the county personnel system.

(b) Beginning January 1, 2018, a new personnel policy board shall be appointed pursuant to this subdivision to replace the board appointed pursuant to subdivision (a) of this subsection. One member shall be appointed by the board of county commissioners, one member shall be appointed by the elected department heads, and two members shall be appointed by classified employees who are covered by the county personnel system. The four members shall select a fifth member for the personnel policy board. The initial selection of the fifth member for a term beginning on January 1, 2018, shall be made on or before March 1, 2018.

(3)(a) This subdivision applies until January 1, 2018. The first appointments made to the personnel policy board shall be for one, two, three, four, and five years. The board of county commissioners shall initially appoint members for terms of one and five years. The elected department heads shall initially appoint members for terms of two and four years. The classified employees who are covered by the county personnel system shall initially appoint a member for a term of three years. Within three months after May 6, 1987, the classified employees who are covered by the county personnel system shall initially appoint another member for a term of one year.

(b) This subdivision applies beginning January 1, 2018. The member appointed for a term beginning on January 1, 2018, by the board of county commissioners shall serve for a term of one year. The member appointed for a term beginning on January 1, 2018, by the elected department heads shall serve for a term of five years. The members appointed for a term beginning on January 1, 2018, by the classified employees who are covered by the county personnel system shall serve for terms of two years and four years as designated by the appointment process. The fifth member appointed for a term beginning on January 1, 2018, by the other four members shall serve a term of three years.

(c) Thereafter, each member shall be appointed in the same manner for a term of five years, except that any person appointed to fill a vacancy occurring prior to the expiration of a term shall be appointed in the same manner for the remainder of the term. Each member of the board shall hold office until his or her successor is appointed and qualified.

(4) The board of county commissioners and elected department heads may remove any member of the personnel policy board for neglect of duty or misconduct in office after first giving him or her a copy of the reasons for removal and providing for the member to be heard publicly before the commissioners and elected department heads. A copy of the charges and a transcript of the record of the hearing shall be filed with the county clerk.

(5) The personnel policy board shall elect a chairperson from among its members. The board shall meet at such time and place as shall be specified by call of the chairperson or the county personnel officer. At least one meeting shall be held quarterly. For the personnel policy board appointed prior to January 1, 2018, pursuant to subdivision (2)(a) of this section, four members shall constitute a quorum for the transaction of business. For the personnel policy board appointed on and after January 1, 2018, pursuant to subdivision (2)(b) of this section, three members shall constitute a quorum for the transaction of business, except that no business shall be transacted unless one of the members appointed by the board of county commissioners or the elected department heads and one of the members appointed by the classified employ-



ees who are covered by the county personnel system are present at the meeting. Board members shall serve without compensation.

**Source:** Laws 1974, LB 995, § 5; Laws 1987, LB 198, § 2; Laws 2017, LB508, § 4.

Effective date August 24, 2017.

## ARTICLE 31 COUNTY PURCHASING

Section  
23-3104. Terms, defined.

### **23-3104 Terms, defined.**

As used in the County Purchasing Act, unless the context otherwise requires:

(1) Mobile equipment means all vehicles propelled by any power other than muscular, including, but not limited to, motor vehicles, off-road designed vehicles, motorcycles, passenger cars, self-propelled mobile homes, truck-tractors, trucks, cabin trailers, semitrailers, trailers, utility trailers, and road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors;

(2) Personal property includes, but is not limited to, supplies, materials, mobile equipment, and equipment used by or furnished to any county officer, office, department, institution, board, or other agency of the county government. Personal property does not include election ballots;

(3) Services means any and all services except telephone, telegraph, postal, and electric light and power service, other similar services, and election contractual services; and

(4) Purchasing or purchase means the obtaining of personal property or services by sale, lease, or other contractual means. Purchase also includes contracting with sheltered workshops for products or services as provided in Chapter 48, article 15. Purchasing or purchase does not include any purchase or lease of personal property or services by a facility established under section 23-3501 or by or on behalf of a county coroner.

**Source:** Laws 1943, c. 57, § 5, p. 228; R.S.1943, § 23-324.03; R.S.1943, (1983), § 23-324.03; Laws 1985, LB 393, § 4; Laws 1988, LB 602, § 1; Laws 1988, LB 828, § 5; Laws 2003, LB 41, § 1; Laws 2011, LB628, § 1; Laws 2012, LB995, § 1; Laws 2017, LB458, § 1.

Effective date August 24, 2017.

## ARTICLE 32 COUNTY ASSESSOR

Section  
23-3211. Law enforcement officer's residential address; withheld from public; application; form; county assessor and register of deeds; duty.

**23-3211 Law enforcement officer's residential address; withheld from public; application; form; county assessor and register of deeds; duty.**

Unless requested in writing, the county assessor and register of deeds shall withhold from the public the residential address of a law enforcement officer who applies to the county assessor in the county of his or her residence. The application shall be in a form prescribed by the county assessor and shall include the name, address, and certified law enforcement identification number of the law enforcement officer and the parcel identification number for his or her residential address. The county assessor shall notify the register of deeds regarding the receipt of a complete application. The county assessor and the register of deeds shall withhold the address of a law enforcement officer who complies with this section for five years after receipt of a complete application. The law enforcement officer may renew his or her application every five years upon submission of an updated application.

**Source:** Laws 2017, LB624, § 1.

Operative date January 1, 2018.

### ARTICLE 34 PUBLIC DEFENDER

#### Section

23-3406. Public defender; contract; terms.

23-3408. Public defender; second attorney authorized; when; fees.

#### **23-3406 Public defender; contract; terms.**

(1) The contract negotiated between the county board and the contracting attorney shall specify the categories of cases in which the contracting attorney is to provide services.

(2) The contract negotiated between the county board and the contracting attorney shall be awarded for at least a two-year term. Removal of the contracting attorney short of the agreed term may be for good cause only.

(3) The contract between the county board and the contracting attorney may specify a maximum allowable caseload for each full-time or part-time attorney who handles cases under the contract. Caseloads shall allow each lawyer to give every client the time and effort necessary to provide effective representation.

(4) The contract between the county board and the contracting attorney shall provide that the contracting attorney be compensated at a minimum rate which reflects the following factors:

(a) The customary compensation in the community for similar services rendered by a privately retained counsel to a paying client or by government or other publicly paid attorneys to a public client;

(b) The time and labor required to be spent by the attorney; and

(c) The degree of professional ability, skill, and experience called for and exercised in the performance of the services.

(5) The contract between the county board and the contracting attorney shall provide that the contracting attorney may decline to represent clients with no reduction in compensation if the contracting attorney is assigned more cases which require an extraordinary amount of time and preparation than the contracting attorney can competently handle.

(6) The contract between the contracting attorney and the county board shall provide that the contracting attorney shall receive at least ten hours of continu-

ing legal education annually in the area of criminal law. The contract between the county board and the contracting attorney shall provide funds for the continuing legal education of the contracting attorney in the area of criminal law.

(7) The contract between the county board and the contracting attorney shall require that the contracting attorney provide legal counsel to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association and the Canons of Ethics for Attorneys in the State of Nebraska. The contract between the county board and the contracting attorney shall provide that the contracting attorney shall be available to eligible defendants upon their request, or the request of someone acting on their behalf, at any time the Constitution of the United States or the Constitution of Nebraska requires the appointment of counsel.

(8) The contract between the county board and the contracting attorney shall provide for reasonable compensation over and above the normal contract price for cases which require an extraordinary amount of time and preparation, including capital cases.

**Source:** Laws 1986, LB 885, § 3; R.S.1943, (1989), § 29-1826; Laws 1990, LB 822, § 6; Laws 2015, LB268, § 1; Referendum 2016, No. 426.

**Note:** The changes made to section 23-3406 by Laws 2015, LB 268, section 1, have been omitted because of the vote on the referendum at the November 2016 general election.

**23-3408 Public defender; second attorney authorized; when; fees.**

In the event that the contracting attorney is appointed to represent an individual charged with a Class I or Class IA felony, the contracting attorney shall immediately apply to the district court for appointment of a second attorney to assist in the case. Upon application from the contracting attorney, the district court shall appoint another attorney with substantial felony trial experience to assist the contracting attorney in the case. Application for fees for the attorney appointed by the district court shall be made to the district court judge who shall allow reasonable fees. Once approved by the court, such fees shall be paid by the county board.

**Source:** Laws 1986, LB 885, § 5; R.S.1943, (1989), § 29-1828; Laws 1990, LB 822, § 8; Laws 2015, LB268, § 2; Referendum 2016, No. 426.

**Note:** The changes made to section 23-3408 by Laws 2015, LB 268, section 2, have been omitted because of the vote on the referendum at the November 2016 general election.

**ARTICLE 35**

**MEDICAL AND MULTIUNIT FACILITIES**

(a) GENERAL PROVISIONS

Section  
23-3526. Retirement plan; authorized; reports.

(a) GENERAL PROVISIONS

**23-3526 Retirement plan; authorized; reports.**

(1) The board of trustees of each facility, as provided by section 23-3501, shall, upon approval of the county board, have the power and authority to establish and fund a retirement plan for the benefit of its full-time employees. The plan may be funded by any actuarially recognized method approved by the

county board. Employees participating in the plan may be required to contribute toward funding the benefits. The facility shall pay all costs of establishing and maintaining the plan. The plan may be integrated with old age and survivor's insurance.

(2) Beginning December 31, 1998, through December 31, 2017:

(a) The chairperson of the board of trustees of a facility with a retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board an annual report on such plan and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan which is not administered by a retirement system under the County Employees Retirement Act, a full description of investment policies and options available to plan participants; and
- (viii) For each defined benefit plan which is not administered by a retirement system under the County Employees Retirement Act, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan which is not administered by a retirement system under the County Employees Retirement Act contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits; and

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the board of trustees shall cause to be prepared an annual report for each retirement plan which is not administered by a retirement system under the County Employees Retirement Act, and the chairperson shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the board of trustees does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the facility. All costs of the audit shall be paid by the facility. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section which is not administered by a retirement system under the County Employees Retirement Act. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good

standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

**Source:** Laws 1977, LB 346, § 1; R.S.1943, (1987), § 23-343.121; Laws 1998, LB 1191, § 35; Laws 1999, LB 795, § 11; Laws 2011, LB474, § 11; Laws 2014, LB759, § 17; Laws 2017, LB415, § 17. Effective date May 24, 2017.

**Cross References**

County Employees Retirement Act, see section 23-2331.

**ARTICLE 36**

**INDUSTRIAL SEWER CONSTRUCTION**

**Section**

23-3637. Joint action agreements; service agreement; terms and conditions.

**23-3637 Joint action agreements; service agreement; terms and conditions.**

(1) The county and any city may enter into any agreement for joint action with regard to the planning, construction, management, operation, or financing of a sewerage disposal system and plant or plants consistent with the authority of the county as provided in the County Industrial Sewer Construction Act and consistent with the authority of the city and county under the Interlocal Cooperation Act. The county may enter into an agreement with any city for the sale to the city of all or any portion of a sewerage disposal system and plant or plants developed by the county under the County Industrial Sewer Construction Act upon such terms and conditions as to which the city and county may formally agree. Any agreement entered into by the county and any city pursuant to this section shall be consistent with and conditioned upon the rights of any third party with a direct financial interest in the sewerage disposal system and plant or plants.

(2) Notwithstanding any other provision of Nebraska law, the county and any city may enter into a service agreement with any joint entity created pursuant to the Interlocal Cooperation Act which owns or operates or proposes to own or operate any sewerage disposal system and plant, including the use or right to use real or personal property included in any such project.

(3) Any service agreement entered into under subsection (2) of this section may provide:

(a) For the payment of fixed or variable periodic amounts for service or the right to obtain service, including the use or right to use real or personal property;

(b) That such service agreement may extend for a term of years as determined by the governing body of the county or city and be binding upon such county or city over such term of years;

(c) That fixed or variable periodic amounts payable may be determined based upon any of the following factors, or such other factors as may be deemed reasonable by the parties, and such amounts may be divided and specifically payable with respect to such factors:

(i) Operating, maintenance, and management expenses, including renewals and replacements for facilities and equipment, amounts payable with respect to debt service on bonds or other obligations, including margins of debt service coverage and amounts for debt service reserves if deemed appropriate, which amounts may be separately identified and shall have the status of amounts paid for the principal or interest on bonds issued by such party for purposes of budget and expenditure limitations; and

(ii) Amounts necessary to build or maintain operating reserves, capital reserves, and debt service reserves;

(d) That any such service agreement may require payment to be made in the agreed-upon fixed or variable periodic amounts regardless of whether such sewerage disposal system and plant or plants are completed or operational and notwithstanding any suspension, interruption, interference, reduction, or curtailment of the services of such project or system; and

(e) Such other provisions as the parties to the service agreement deem appropriate in connection with constructing and operating a sewerage disposal system and plant or plants, including the acquisition of real and personal property, the construction of facilities, and the operation, maintenance, and management of services, property, and related facilities.

(4) In order for a county to provide for any or all of the payments due under such service agreement entered into under subsection (2) of this section, such payments may be made from the levy authority as authorized under section 23-3616. When such tax is used for the purposes under such service agreement, it shall have the same status as a tax levied for the purpose of paying bonds, but shall be subject to the levy limitation under Article VIII, section 5, of the Constitution of Nebraska.

**Source:** Laws 1994, LB 1139, § 37; Laws 1999, LB 87, § 67; Laws 2017, LB253, § 1.

Effective date August 24, 2017.

**Cross References**

**Interlocal Cooperation Act**, see section 13-801.

## CHAPTER 24

### COURTS

Article.

- 2. Supreme Court.
  - (a) Organization. 24-201.01.
- 5. County Court.
  - (a) Organization. 24-517.
- 7. Judges, General Provisions.
  - (a) Judges Retirement. 24-701 to 24-710.15.
- 11. Court of Appeals. 24-1105, 24-1106.

#### ARTICLE 2

#### SUPREME COURT

##### (a) ORGANIZATION

Section

- 24-201.01. Supreme Court judges; salary; amount; restriction on other employment of judges.

##### (a) ORGANIZATION

#### **24-201.01 Supreme Court judges; salary; amount; restriction on other employment of judges.**

On July 1, 2016, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred seventy-one thousand nine hundred seventy-four dollars and seventy-three cents. On July 1, 2017, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred seventy-three thousand six hundred ninety-three dollars and ninety-seven cents. On January 1, 2019, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred seventy-six thousand two hundred ninety-nine dollars and thirty-eight cents.

The Chief Justice and the judges of the Supreme Court shall hold no other public office of profit or trust during their terms of office nor accept any public appointment or employment under the authority of the government of the United States for which they receive compensation for their services. Such salaries shall be payable in equal monthly installments.

**Source:** Laws 1947, c. 345, § 1, p. 1089; Laws 1951, c. 58, § 1, p. 191; Laws 1955, c. 77, § 1, p. 231; Laws 1959, c. 93, § 1, p. 406; Laws 1963, c. 127, § 1, p. 480; Laws 1963, c. 534, § 1, p. 1676; Laws 1967, c. 136, § 1, p. 421; Laws 1969, c. 173, § 1, p. 754; Laws 1969, c. 174, § 1, p. 755; Laws 1972, LB 1293, § 2; Laws 1974, LB 923, § 1; Laws 1976, LB 76, § 1; Laws 1978, LB 672, § 1; Laws 1979, LB 398, § 1; Laws 1983, LB 269, § 1; Laws 1986, LB 43, § 1; Laws 1987, LB 564, § 1; Laws 1990, LB 42, § 1; Laws 1995, LB 189, § 1; Laws 1997, LB 362, § 1; Laws 1999, LB 350, § 1; Laws 2001, LB 357, § 1; Laws 2005, LB 348, § 1; Laws 2007, LB377, § 1; Laws 2009, LB414, § 1; Laws 2012, LB862,

§ 1; Laws 2013, LB306, § 1; Laws 2015, LB663, § 1; Laws 2017, LB647, § 1.  
Operative date July 1, 2017.

**ARTICLE 5**  
**COUNTY COURT**

(a) ORGANIZATION

Section  
24-517. Jurisdiction.

(a) ORGANIZATION

**24-517 Jurisdiction.**

Each county court shall have the following jurisdiction:

(1) Exclusive original jurisdiction of all matters relating to decedents' estates, including the probate of wills and the construction thereof, except as provided in subsection (c) of section 30-2464 and section 30-2486;

(2) Exclusive original jurisdiction in all matters relating to the guardianship of a person, except if a separate juvenile court already has jurisdiction over a child in need of a guardian, concurrent original jurisdiction with the separate juvenile court in such guardianship;

(3) Exclusive original jurisdiction of all matters relating to conservatorship of any person, including (a) original jurisdiction to consent to and authorize a voluntary selection, partition, and setoff of a ward's interest in real estate owned in common with others and to exercise any right of the ward in connection therewith which the ward could exercise if competent and (b) original jurisdiction to license the sale of such real estate for cash or on such terms of credit as shall seem best calculated to produce the highest price subject only to the requirements set forth in section 30-3201;

(4) Concurrent jurisdiction with the district court to involuntarily partition a ward's interest in real estate owned in common with others;

(5) Concurrent original jurisdiction with the district court in all civil actions of any type when the amount in controversy is forty-five thousand dollars or less through June 30, 2005, and as set by the Supreme Court pursuant to subdivision (b) of this subdivision on and after July 1, 2005.

(a) When the pleadings or discovery proceedings in a civil action indicate that the amount in controversy is greater than the jurisdictional amount of subdivision (5) of this section, the county court shall, upon the request of any party, certify the proceedings to the district court as provided in section 25-2706. An award of the county court which is greater than the jurisdictional amount of subdivision (5) of this section is not void or unenforceable because it is greater than such amount, however, if an award of the county court is greater than the jurisdictional amount, the county court shall tax as additional costs the difference between the filing fee in district court and the filing fee in county court.

(b) The Supreme Court shall adjust the jurisdictional amount for the county court every fifth year commencing July 1, 2005. The adjusted jurisdictional amount shall be equal to the then current jurisdictional amount adjusted by the average percentage change in the unadjusted Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the



five-year period preceding the adjustment date. The jurisdictional amount shall be rounded to the nearest one-thousand-dollar amount;

(6) Concurrent original jurisdiction with the district court in any criminal matter classified as a misdemeanor or for any infraction. The district court shall have concurrent original jurisdiction in any criminal matter classified as a misdemeanor that arises from the same incident as a charged felony;

(7) Concurrent original jurisdiction with the district court in domestic relations matters as defined in section 25-2740 and with the district court and separate juvenile court in paternity or custody determinations as provided in section 25-2740;

(8) Concurrent original jurisdiction with the district court in matters arising under the Nebraska Uniform Trust Code;

(9) Exclusive original jurisdiction in any action based on violation of a city or village ordinance, except with respect to violations committed by persons under eighteen years of age;

(10) The jurisdiction of a juvenile court as provided in the Nebraska Juvenile Code when sitting as a juvenile court in counties which have not established separate juvenile courts;

(11) Exclusive original jurisdiction in matters of adoption, except if a separate juvenile court already has jurisdiction over the child to be adopted, concurrent original jurisdiction with the separate juvenile court;

(12) Exclusive original jurisdiction in matters arising under the Nebraska Uniform Custodial Trust Act;

(13) Concurrent original jurisdiction with the district court in any matter relating to a power of attorney and the action or inaction of any agent acting under a power of attorney;

(14) Exclusive original jurisdiction in any action arising under sections 30-3401 to 30-3432;

(15) Exclusive original jurisdiction in matters arising under the Nebraska Uniform Transfers to Minors Act;

(16) Concurrent original jurisdiction with the district court in matters arising under the Uniform Principal and Income Act;

(17) Concurrent original jurisdiction with the district court in matters arising under the Uniform Testamentary Additions to Trusts Act (1991) except as otherwise provided in subdivision (1) of this section;

(18) Concurrent original jurisdiction with the district court to determine contribution rights under section 68-919; and

(19) All other jurisdiction heretofore provided and not specifically repealed by Laws 1972, Legislative Bill 1032, and such other jurisdiction as hereafter provided by law.

**Source:** Laws 1972, LB 1032, § 17; Laws 1973, LB 226, § 6; Laws 1977, LB 96, § 1; Laws 1979, LB 373, § 1; Laws 1983, LB 137, § 1; Laws 1984, LB 13, § 12; Laws 1986, LB 529, § 7; Laws 1986, LB 1229, § 1; Laws 1991, LB 422, § 1; Laws 1996, LB 1296, § 2; Laws 1997, LB 229, § 1; Laws 1998, LB 1041, § 1; Laws 2001, LB 269, § 1; Laws 2003, LB 130, § 114; Laws 2005, LB 361, § 29; Laws 2008, LB280, § 1; Laws 2008, LB1014, § 4; Laws

2009, LB35, § 5; Laws 2014, LB464, § 2; Laws 2015, LB314, § 1;  
 Laws 2017, LB268, § 1.  
 Effective date August 24, 2017.

Cross References

Nebraska Juvenile Code, see section 43-2,129.  
 Nebraska Uniform Custodial Trust Act, see section 30-3501.  
 Nebraska Uniform Transfers to Minors Act, see section 43-2701.  
 Nebraska Uniform Trust Code, see section 30-3801.  
 Uniform Principal and Income Act, see section 30-3116.  
 Uniform Testamentary Additions to Trusts Act (1991), see section 30-3601.

ARTICLE 7

JUDGES, GENERAL PROVISIONS

(a) JUDGES RETIREMENT

- Section  
 24-701. Terms, defined.  
 24-708. Retirement of judge; when; deferment of payment; board; duties.  
 24-710.01. Judges; alternative contribution rate and retirement benefit; election;  
 notice.  
 24-710.04. Reemployment; military service; credit; effect.  
 24-710.15. Judges who became members on and after July 1, 2015; cost-of-living  
 payment.

(a) JUDGES RETIREMENT

**24-701 Terms, defined.**

For purposes of the Judges Retirement Act, unless the context otherwise requires:

(1)(a) Actuarial equivalence means the equality in value of the aggregate amounts expected to be received under different forms of payment.

(b) For a judge hired prior to July 1, 2017, the determinations are to be based on the 1994 Group Annuity Mortality Table reflecting sex-distinct factors blended using seventy-five percent of the male table and twenty-five percent of the female table. An interest rate of eight percent per annum shall be reflected in making these determinations.

(c) For a judge hired on or after July 1, 2017, or rehired on or after July 1, 2017, after termination of employment and being paid a retirement benefit, the determinations shall be based on a unisex mortality table and an interest rate specified by the board. Both the mortality table and the interest rate shall be recommended by the actuary and approved by the board following an actuarial experience study, a benefit adequacy study, or a plan valuation. The mortality table, interest rate, and actuarial factors in effect on the judge's retirement date will be used to calculate actuarial equivalency of any retirement benefit. Such interest rate may be, but is not required to be, equal to the assumed rate of return;

(2) Beneficiary means a person so designated by a judge in the last designation of beneficiary on file with the board or, if no designated person survives or if no designation is on file, the estate of such judge;

(3) Board means the Public Employees Retirement Board;

(4)(a) Compensation means the statutory salary of a judge or the salary being received by such judge pursuant to law. Compensation does not include

compensation for unused sick leave or unused vacation leave converted to cash payments, insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125 and 457 of the Internal Revenue Code as defined in section 49-801.01 or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as defined in section 49-801.01 shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(5) Creditable service means the total number of years served as a judge, including prior service, military service, and current service, computed to the nearest one-twelfth year. For current service prior to the time that the member has contributed the required percentage of salary until the maximum benefit as limited by section 24-710 has been earned, creditable service does not include current service for which member contributions are not made or are withdrawn and not repaid;

(6) Current benefit means the initial benefit increased by all adjustments made pursuant to the Judges Retirement Act;

(7)(a) Current service means the period of service (i) any judge of the Supreme Court or judge of the district court serves in such capacity from and after January 3, 1957, (ii)(A) any judge of the Nebraska Workmen's Compensation Court served in such capacity from and after September 20, 1957, and prior to July 17, 1986, and (B) any judge of the Nebraska Workers' Compensation Court serves in such capacity on and after July 17, 1986, (iii) any county judge serves in such capacity from and after January 5, 1961, (iv) any judge of a separate juvenile court serves in such capacity, (v) any judge of the municipal court served in such capacity subsequent to October 23, 1967, and prior to July 1, 1985, (vi) any judge of the county court or associate county judge serves in such capacity subsequent to January 4, 1973, (vii) any clerk magistrate, who was an associate county judge and a member of the fund at the time of appointment as a clerk magistrate, serves in such capacity from and after July 1, 1986, and (viii) any judge of the Court of Appeals serves in such capacity on or after September 6, 1991.

(b) Current service shall not be deemed to be interrupted by (i) temporary or seasonal suspension of service that does not terminate the employee's employment, (ii) leave of absence authorized by the employer for a period not exceeding twelve months, (iii) leave of absence because of disability, or (iv) military service, when properly authorized by the board. Current service does not include any period of disability for which disability retirement benefits are received under section 24-709;

(8) Final average compensation for a judge who becomes a member prior to July 1, 2015, means the average monthly compensation for the three twelve-month periods of service as a judge in which compensation was the greatest or,

in the event of a judge serving less than three twelve-month periods, the average monthly compensation for such judge's period of service. Final average compensation for a judge who becomes a member on and after July 1, 2015, means the average monthly compensation for the five twelve-month periods of service as a judge in which compensation was the greatest or, in the event of a judge serving less than five twelve-month periods, the average monthly compensation for such judge's period of service;

(9) Fund means the Nebraska Retirement Fund for Judges;

(10) Future member means a judge who first served as a judge on or after December 25, 1969, or means a judge who first served as a judge prior to December 25, 1969, who elects to become a future member on or before June 30, 1970, as provided in subsection (8) of section 24-703 or section 24-710.01;

(11) Hire date or date of hire means the first day of compensated service subject to retirement contributions;

(12) Initial benefit means the retirement benefit calculated at the time of retirement;

(13) Judge means and includes (a) all duly elected or appointed Chief Justices or judges of the Supreme Court and judges of the district courts of Nebraska who serve in such capacity on and after January 3, 1957, (b)(i) all duly appointed judges of the Nebraska Workmen's Compensation Court who served in such capacity on and after September 20, 1957, and prior to July 17, 1986, and (ii) judges of the Nebraska Workers' Compensation Court who serve in such capacity on and after July 17, 1986, (c) judges of separate juvenile courts, (d) judges of the county courts of the respective counties who serve in such capacity on and after January 5, 1961, (e) judges of the county court and clerk magistrates who were associate county judges and members of the fund at the time of their appointment as clerk magistrates, (f) judges of municipal courts established by Chapter 26, article 1, who served in such capacity on and after October 23, 1967, and prior to July 1, 1985, and (g) judges of the Court of Appeals;

(14) Member means a judge eligible to participate in the retirement system established under the Judges Retirement Act;

(15) Military service means active service of (a) any judge of the Supreme Court or judge of the district court in any of the armed forces of the United States during a war or national emergency prior or subsequent to September 18, 1955, if such service commenced while such judge was holding the office of judge, (b) any judge of the Nebraska Workmen's Compensation Court or the Nebraska Workers' Compensation Court in any of the armed forces of the United States during a war or national emergency prior or subsequent to September 20, 1957, if such service commenced while such judge was holding the office of judge, (c) any judge of the municipal court in any of the armed forces of the United States during a war or national emergency prior or subsequent to October 23, 1967, and prior to July 1, 1985, if such service commenced while such judge was holding the office of judge, (d) any judge of the county court or associate county judge in any of the armed forces of the United States during a war or national emergency prior or subsequent to January 4, 1973, if such service commenced while such judge was holding the office of judge, (e) any clerk magistrate, who was an associate county judge and a member of the fund at the time of appointment as a clerk magistrate, in any of the armed forces of the United States during a war or national emergency on

or after July 1, 1986, if such service commenced while such clerk magistrate was holding the office of clerk magistrate, and (f) any judge of the Court of Appeals in any of the armed forces of the United States during a war or national emergency on or after September 6, 1991, if such service commenced while such judge was holding the office of judge. The board shall have the power to determine when a national emergency exists or has existed for the purpose of applying this definition and provision;

(16) Normal form annuity means a series of equal monthly payments payable at the end of each calendar month during the life of a retired judge as provided in sections 24-707 and 24-710, except as provided in section 42-1107. The first payment shall include all amounts accrued since the effective date of the award of the annuity. The last payment shall be at the end of the calendar month in which such judge dies. If at the time of death the amount of annuity payments such judge has received is less than contributions to the fund made by such judge, plus regular interest, the difference shall be paid to the beneficiary or estate;

(17) Normal retirement date means the first day of the month following attainment of age sixty-five;

(18) Original member means a judge who first served as a judge prior to December 25, 1969, who does not elect to become a future member pursuant to subsection (8) of section 24-703 or section 24-710.01, and who was retired on or before December 31, 1992;

(19) Plan year means the twelve-month period beginning on July 1 and ending on June 30 of the following year;

(20) Prior service means all the periods of time any person has served as a (a) judge of the Supreme Court or judge of the district court prior to January 3, 1957, (b) judge of the county court prior to January 5, 1961, (c) judge of the Nebraska Workmen's Compensation Court prior to September 20, 1957, (d) judge of the separate juvenile court, or (e) judge of the municipal court prior to October 23, 1967;

(21) Regular interest means interest fixed at a rate equal to the daily treasury yield curve for one-year treasury securities, as published by the Secretary of the Treasury of the United States, that applies on July 1 of each year, which may be credited monthly, quarterly, semiannually, or annually as the board may direct;

(22) Retirement application means the form approved and provided by the retirement system for acceptance of a member's request for either regular or disability retirement;

(23) Retirement date means (a) the first day of the month following the date upon which a member's request for retirement is received on a retirement application if the member is eligible for retirement and has terminated employment or (b) the first day of the month following termination of employment if the member is eligible for retirement and has filed an application but has not yet terminated employment;

(24) Retirement system or system means the Nebraska Judges Retirement System as provided in the Judges Retirement Act;

(25) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or

former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under the qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits; and

(26) Termination of employment occurs on the date on which the State Court Administrator's office determines that the judge's employer-employee relationship with the State of Nebraska is dissolved. The State Court Administrator's office shall notify the board of the date on which such a termination has occurred. Termination of employment does not include ceasing employment as a judge if the judge returns to regular employment as a judge or is employed on a regular basis by another agency of the State of Nebraska and there are less than one hundred twenty days between the date when the judge's employer-employee relationship ceased and the date when the employer-employee relationship recommences. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 24-710, the board shall require the member who has received such benefit to repay the benefit to the retirement system.

**Source:** Laws 1955, c. 83, § 1, p. 244; Laws 1957, c. 78, § 1, p. 315; Laws 1957, c. 79, § 1, p. 318; Laws 1959, c. 95, § 1, p. 409; Laws 1959, c. 189, § 13, p. 687; Laws 1965, c. 115, § 1, p. 440; Laws 1969, c. 178, § 1, p. 759; Laws 1971, LB 987, § 4; Laws 1972, LB 1032, § 120; Laws 1973, LB 226, § 10; Laws 1974, LB 905, § 3; Laws 1983, LB 223, § 1; Laws 1984, LB 13, § 32; Laws 1984, LB 750, § 1; Laws 1986, LB 92, § 1; Laws 1986, LB 311, § 9; Laws 1986, LB 351, § 1; Laws 1986, LB 529, § 17; Laws 1986, LB 811, § 12; Laws 1989, LB 506, § 2; Laws 1991, LB 549, § 15; Laws 1991, LB 732, § 36; Laws 1992, LB 682, § 1; Laws 1994, LB 833, § 12; Laws 1996, LB 700, § 1; Laws 1996, LB 847, § 11; Laws 1996, LB 1076, § 8; Laws 1996, LB 1273, § 19; Laws 1997, LB 624, § 9; Laws 1999, LB 674, § 1; Laws 2000, LB 1192, § 4; Laws 2001, LB 408, § 6; Laws 2003, LB 451, § 14; Laws 2011, LB6, § 1; Laws 2012, LB916, § 14; Laws 2013, LB263, § 10; Laws 2015, LB468, § 1; Laws 2016, LB790, § 2; Laws 2017, LB415, § 18.

Effective date May 24, 2017.

#### Cross References

**Spousal Pension Rights Act**, see section 42-1101.

### **24-708 Retirement of judge; when; deferment of payment; board; duties.**

(1) Except as provided in section 24-721, a judge may retire upon reaching the age of sixty-five years and upon making application to the board. Upon retiring each such judge shall receive retirement annuities as provided in section 24-710.

(2) Except as provided in section 24-721, a judge may retire upon reaching the age of fifty-five years and elect to receive a reduced monthly retirement income in lieu of a deferred vested annuity. The judge may request that the reduced monthly retirement income commence at any date, beginning on the first day of the month following the actual retirement date and ending on the normal retirement date. The amount of the reduced monthly retirement income shall be calculated based on the length of creditable service and average compensation at the actual retirement date. When a judge has elected to receive a reduced monthly retirement income to commence at the age of sixty-four years, the monthly payments shall be reduced by three percent. When a judge has elected to receive a reduced monthly retirement income to commence at the age of sixty-three years, the monthly payments shall be reduced by six percent. When a judge has elected to receive a reduced monthly retirement income to commence at the age of sixty-two years, the monthly payments shall be reduced by nine percent. When a judge has elected to receive a reduced monthly retirement income to commence prior to the age of sixty-two years, the monthly payments shall be further reduced to an amount that is actuarially equivalent to the amount payable at the age of sixty-two years.

(3) Payment of any benefit provided under the Judges Retirement Act may not be deferred later than April 1 of the year following the year in which the judge has both attained at least age seventy and one-half years and terminated his or her employment as a judge.

(4) The effective date of retirement payments shall be the first day of the month following (a) the date a member qualifies for retirement as provided in this section or (b) the date upon which a member's request for retirement is received on an application form provided by the retirement system, whichever is later. An application may be filed no more than one hundred twenty days in advance of qualifying for retirement.

(5) The board shall make reasonable efforts to locate the member or the member's beneficiary and distribute benefits by the required beginning date as specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder. If the board is unable to make such a distribution, the benefit shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any member would otherwise receive under the Judges Retirement Act.

**Source:** Laws 1955, c. 83, § 8, p. 248; Laws 1957, c. 78, § 2, p. 317; Laws 1957, c. 79, § 3, p. 322; Laws 1965, c. 115, § 3, p. 444; Laws 1972, LB 1032, § 123; Laws 1973, LB 353, § 1; Laws 1984, LB 750, § 2; Laws 1986, LB 311, § 11; Laws 1987, LB 296, § 2; Laws 1989, LB 506, § 6; Laws 1994, LB 833, § 21; Laws 1997, LB 624, § 13; Laws 2003, LB 320, § 2; Laws 2003, LB 451, § 16; Laws 2004, LB 1097, § 14; Laws 2008, LB1147, § 5; Laws 2017, LB415, § 19.

Effective date May 24, 2017.

**Cross References**

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

**24-710.01 Judges; alternative contribution rate and retirement benefit; election; notice.**

Any original member, as defined in subdivision (18) of section 24-701, who has not previously retired, may elect to make contributions and receive benefits pursuant to subsection (2) of section 24-703 and subsection (2) of section 24-710, instead of those provided by subsection (1) of section 24-703 and subsection (1) of section 24-710. Such election shall be by written notice delivered to the board not later than November 1, 1981. Such member shall thereafter be considered a future member.

**Source:** Laws 1977, LB 344, § 1; Laws 1981, LB 459, § 5; Laws 1986, LB 92, § 6; Laws 2016, LB790, § 3; Laws 2017, LB415, § 20.  
Effective date May 24, 2017.

**24-710.04 Reemployment; military service; credit; effect.**

(1) Any judge who returns to service as a judge for the State of Nebraska pursuant to 38 U.S.C. 4301 et seq., shall be treated as not having incurred a break in service by reason of the judge's period of military service. Such military service shall be credited for purposes of determining the nonforfeitability of the member's accrued benefits and the accrual of benefits under the plan.

(2) The state shall be liable for funding any obligation of the plan to provide benefits based upon such period of military service. To satisfy the liability, the state court administrator shall pay to the retirement system an amount equal to:

(a) The sum of the judge's contributions that would have been paid during such period of military service; and

(b) Any actuarial costs necessary to fund the obligation of the plan to provide benefits based upon such period of military service. For the purposes of determining the amount of such liability and obligation of the plan, earnings and forfeitures, gains and losses, regular interest, or interest credits that would have accrued on the judge's contributions that are paid by the state court administrator pursuant to this section shall not be included.

(3) The amount required in subsection (2) of this section shall be paid to the retirement system as soon as reasonably practicable following the date the judge returns to service as a judge for the State of Nebraska, but must be paid within eighteen months of the date the board notifies the state court administrator of the amount due. If the state court administrator fails to pay the required amount within such eighteen-month period, then the state court administrator is also responsible for any actuarial costs and interest on actuarial costs that accrue from eighteen months after the date the state court administrator is notified by the board until the date the amount is paid.

(4) The board may adopt and promulgate rules and regulations to carry out this section, including, but not limited to, rules and regulations on:

(a) How and when the judge and state court administrator must notify the retirement system of a period of military service;

(b) The acceptable methods of payment;

(c) Determining the service and compensation upon which the contributions must be made;

(d) Accelerating the payment from the state court administrator due to unforeseen circumstances that occur before payment is made pursuant to this section, including, but not limited to, the judge's termination or retirement or the court's reorganization, consolidation, or merger; and



(e) The documentation required to substantiate that the judge returned to service as a judge for the State of Nebraska pursuant to 38 U.S.C. 4301 et seq.

(5) This section only applies to military service that falls within the definition of uniformed service under 38 U.S.C. 4301 et seq. Military service does not include service provided pursuant to sections 55-101 to 55-181.

**Source:** Laws 1996, LB 847, § 14; Laws 2017, LB415, § 21.  
Effective date May 24, 2017.

**24-710.15 Judges who became members on and after July 1, 2015; cost-of-living payment.**

(1) Beginning July 1, 2015, for judges who become members on and after July 1, 2015, if the annual valuation made by the actuary, as approved by the board, indicates that the system is fully funded and has sufficient actuarial surplus to provide for a supplemental lump-sum cost-of-living payment, the board may, in its discretion, elect to pay a maximum one and one-half percent supplemental lump-sum cost-of-living payment to each retired member or beneficiary based on the retired member's or beneficiary's total monthly benefit through June 30 of the year for which the supplemental lump-sum cost-of-living payment is being calculated. The supplemental lump-sum cost-of-living payment shall be paid within sixty days after the board's decision. In no event shall the board declare a supplemental lump-sum cost-of-living payment if such payment would cause the plan to be less than fully funded.

(2) For purposes of this section, fully funded means the unfunded actuarial accrued liability, based on the lesser of the actuarial value and the market value, under the entry age actuarial cost method is less than zero on the most recent actuarial valuation date.

(3) Any decision or determination by the board to declare or not declare a cost-of-living payment or as to whether the annual valuation indicates a sufficient actuarial surplus to provide for a cost-of-living payment shall be made in the sole, absolute, and final discretion of the board and shall not be subject to challenge by any member or beneficiary. In no event shall the Legislature be constrained or limited in amending the system notwithstanding the effect of any such change upon the actuarial surplus of the system and the ability of the board to declare future cost-of-living payments.

**Source:** Laws 2015, LB468, § 6; Laws 2017, LB415, § 22.  
Effective date May 24, 2017.

**ARTICLE 11  
COURT OF APPEALS**

Section

24-1105. Cases pending on September 6, 1991; assignment to Court of Appeals.  
24-1106. Jurisdiction; direct review by Supreme Court; when; removal of case.

**24-1105 Cases pending on September 6, 1991; assignment to Court of Appeals.**

Any case on appeal before the Supreme Court on September 6, 1991, except cases in which a sentence of death or life imprisonment has been imposed and cases involving the constitutionality of a statute, may be assigned to the Court of Appeals by the Supreme Court.

**Source:** Laws 1991, LB 732, § 5; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 24-1105 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

**24-1106 Jurisdiction; direct review by Supreme Court; when; removal of case.**

(1) In cases which were appealable to the Supreme Court before September 6, 1991, the appeal, if taken, shall be to the Court of Appeals except in capital cases, cases in which life imprisonment has been imposed, and cases involving the constitutionality of a statute.

(2) Any party to a case appealed to the Court of Appeals may file a petition in the Supreme Court to bypass the review by the Court of Appeals and for direct review by the Supreme Court. The procedure and time for filing the petition shall be as provided by rules of the Supreme Court. In deciding whether to grant the petition, the Supreme Court may consider one or more of the following factors:

(a) Whether the case involves a question of first impression or presents a novel legal question;

(b) Whether the case involves a question of state or federal constitutional interpretation;

(c) Whether the case raises a question of law regarding the validity of a statute;

(d) Whether the case involves issues upon which there is an inconsistency in the decisions of the Court of Appeals or of the Supreme Court;

(e) Whether the case is one of significant public interest; and

(f) Whether the case involves a question of qualified immunity in any civil action under 42 U.S.C. 1983, as the section existed on August 24, 2017.

When a petition for direct review is granted, the case shall be docketed for hearing before the Supreme Court.

(3) The Supreme Court shall by rule provide for the removal of a case from the Court of Appeals to the Supreme Court for decision by the Supreme Court at any time before a final decision has been made on the case by the Court of Appeals. The removal may be on the recommendation of the Court of Appeals or on motion of the Supreme Court. Cases may be removed from the Court of Appeals for decision by the Supreme Court for any one or more of the reasons set forth in subsection (2) of this section or in order to regulate the caseload existing in either the Court of Appeals or the Supreme Court. The Chief Judge of the Court of Appeals and the Chief Justice of the Supreme Court shall regularly inform each other of the number and nature of cases docketed in the respective court.

**Source:** Laws 1991, LB 732, § 6; Laws 2015, LB268, § 3; Referendum 2016, No. 426; Laws 2017, LB204, § 1.  
Effective date August 24, 2017.

**Note:** The changes made to section 24-1106 by Laws 2015, LB 268, section 3, have been omitted because of the vote on the referendum at the November 2016 general election.

## CHAPTER 25

### COURTS; CIVIL PROCEDURE

#### Article.

- 2. Commencement and Limitation of Actions. 25-228, 25-229.
- 5. Commencement of Actions; Process.
  - (b) Service and Return of Summons. 25-511.
- 11. Trial.
  - (f) Exceptions. 25-1140.09.
- 12. Evidence.
  - (c) Means of Producing Witnesses. 25-1223 to 25-1236.
- 13. Judgments.
  - (h) Summary Judgments. 25-1332.
- 15. Executions and Exemptions.
  - (c) Proceedings in Aid of Execution. 25-1577.
- 19. Reversal or Modification of Judgments and Orders by Appellate Courts.
  - (b) Review on Appeal. 25-1912.
- 21. Actions and Proceedings in Particular Cases.
  - (e) Foreclosure of Mortgages. 25-2154.
  - (ll) Emergency Response to Asthma or Allergic Reactions. 25-21,280.
- 25. Uniform Procedure for Acquiring Private Property for Public Use. 25-2501.
- 27. Provisions Applicable to County Courts.
  - (g) Domestic Relations Matters. 25-2740.

#### ARTICLE 2

#### COMMENCEMENT AND LIMITATION OF ACTIONS

#### Section

- 25-228. Action by victim of sexual assault of a child; when.
- 25-229. Action against real estate licensee; when.

#### **25-228 Action by victim of sexual assault of a child; when.**

(1) Notwithstanding any other provision of law:

(a) There shall not be any time limitation for an action against the individual or individuals directly causing an injury or injuries suffered by a plaintiff when the plaintiff was a victim of a violation of section 28-319.01 or 28-320.01 if such violation occurred (i) on or after August 24, 2017, or (ii) prior to August 24, 2017, if such action was not previously time barred; and

(b) An action against any person or entity other than the individual directly causing an injury or injuries suffered by a plaintiff when the plaintiff was a victim of a violation of section 28-319.01 or 28-320.01 may only be brought within twelve years after the plaintiff's twenty-first birthday.

(2) Criminal prosecution of a defendant under section 28-319.01 or 28-320.01 is not required to maintain a civil action for violation of such sections.

**Source:** Laws 2012, LB612, § 1; Laws 2017, LB300, § 1.

Effective date August 24, 2017.

#### **25-229 Action against real estate licensee; when.**

(1) For purposes of this section, real estate licensee means a broker or salesperson who is licensed under the Nebraska Real Estate License Act.

(2) Any action to recover damages based on any act or omission of a real estate licensee relating to real estate brokerage services shall be commenced within two years after whichever of the following occurs first with respect to such brokerage services: (a) A transaction is completed or closed; (b) an agency agreement is terminated; or (c) an unconsummated transaction is terminated or expires. Such two-year period shall not be reduced by agreement and shall not apply to disciplinary actions initiated by the State Real Estate Commission.

(3) If the cause of action described in subsection (2) of this section is not discovered and could not be reasonably discovered within the two-year period described in such subsection, then the action may be commenced within one year from the date of such discovery or from the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier, except that in no event may any such action be commenced more than ten years after the date of rendering or failing to render the brokerage services which provide the basis for the cause of action.

**Source:** Laws 2017, LB257, § 1.  
Effective date August 24, 2017.

Cross References

Nebraska Real Estate License Act, see section 81-885.

**ARTICLE 5**

**COMMENCEMENT OF ACTIONS; PROCESS**

(b) SERVICE AND RETURN OF SUMMONS

Section  
25-511. Service on employee of the state.

(b) SERVICE AND RETURN OF SUMMONS

**25-511 Service on employee of the state.**

Any employee of the state, as defined in section 81-8,210, sued in an individual capacity for an act or omission occurring in connection with duties performed on the state's behalf, regardless of whether the employee is also sued in an official capacity, must be served by serving the employee under section 25-508.01 and also by serving the state under section 25-510.02.

**Source:** Laws 2017, LB204, § 2.  
Effective date August 24, 2017.

**ARTICLE 11**

**TRIAL**

(f) EXCEPTIONS

Section  
25-1140.09. Bill of exceptions; preparation; court reporter; fees; procedure for preparation; taxation of cost.

(f) EXCEPTIONS

**25-1140.09 Bill of exceptions; preparation; court reporter; fees; procedure for preparation; taxation of cost.**

On the application of the county attorney or any party to a suit in which a record of the proceedings has been made, upon receipt of the notice provided

in section 29-2525, or upon the filing of a praecipe for a bill of exceptions by an appealing party in the office of the clerk of the district court as provided in section 25-1140, the court reporter shall prepare a transcribed copy of the proceedings so recorded or any part thereof. The reporter shall be entitled to receive, in addition to his or her salary, a per-page fee as prescribed by the Supreme Court for the original copy and each additional copy, to be paid by the party requesting the same except as otherwise provided in this section.

When the transcribed copy of the proceedings is required by the county attorney, the fee therefor shall be paid by the county in the same manner as other claims are paid. When the defendant in a criminal case, after conviction, makes an affidavit that he or she is unable by reason of his or her poverty to pay for such copy, the court or judge thereof may, by order endorsed on such affidavit, direct delivery of such transcribed copy to such defendant, and the fee shall be paid by the county in the same manner as other claims are allowed and paid. When such copy is prepared in any criminal case in which the sentence adjudged is capital, the fees therefor shall be paid by the county in the same manner as other claims are allowed or paid.

The fee for preparation of a bill of exceptions and the procedure for preparation, settlement, signature, allowance, certification, filing, and amendment of a bill of exceptions shall be regulated and governed by rules of practice prescribed by the Supreme Court. The fee paid shall be taxed, by the clerk of the district court, to the party against whom the judgment or decree is rendered except as otherwise ordered by the presiding district judge.

**Source:** Laws 1879, § 49, p. 93; Laws 1907, c. 43, § 1, p. 182; R.S.1913, § 1200; C.S.1922, § 1123; Laws 1925, c. 67, § 1, p. 225; C.S. 1929, § 27-339; R.S.1943, § 24-342; Laws 1949, c. 45, § 1, p. 150; Laws 1957, c. 107, § 5, p. 380; Laws 1961, c. 104, § 1, p. 336; Laws 1961, c. 105, § 1, p. 337; Laws 1961, c. 106, § 1, p. 338; Laws 1971, LB 357, § 1; Laws 1973, LB 146, § 1; Laws 1973, LB 268, § 2; Laws 1974, LB 647, § 2; Laws 1978, LB 271, § 1; Laws 1982, LB 722, § 1; R.S.1943, (1985), § 24-342; Laws 1991, LB 37, § 1; Laws 2005, LB 348, § 3; Laws 2015, LB268, § 4; Referendum 2016, No. 426.

**Note:** The changes made to section 25-1140.09 by Laws 2015, LB 268, section 4, have been omitted because of the vote on the referendum at the November 2016 general election.

## ARTICLE 12

### EVIDENCE

#### (c) MEANS OF PRODUCING WITNESSES

- Section  
 25-1223. Trial subpoena; deposition subpoena; issuance; statement required; by whom served; forms.  
 25-1224. Subpoena; to whom directed; production of documents, information, or tangible things; Supreme Court; powers.  
 25-1225. Repealed. Laws 2017, LB509, § 8.  
 25-1226. Subpoena; manner of service; time.  
 25-1228. Trial subpoena; witness fee; return; cost.  
 25-1236. Repealed. Laws 2017, LB509, § 8.

#### (c) MEANS OF PRODUCING WITNESSES

**25-1223 Trial subpoena; deposition subpoena; issuance; statement required; by whom served; forms.**

(1) Upon the request of a party to a civil action or proceeding, a subpoena may be issued to command an individual to testify at a trial or deposition. The term trial in reference to a subpoena includes a hearing at which testimony may be taken.

(2) The clerk or a judge of the court in which the action or proceeding is pending shall issue a trial subpoena upon the request of a party. An attorney, as an officer of the court, may issue and sign a trial subpoena on behalf of the court if the attorney is authorized to practice in the court. An attorney who issues a subpoena must file a copy of the subpoena with the court on the day the subpoena is issued.

(3) A person before whom a deposition may be taken may issue a deposition subpoena on behalf of the court in which the action or proceeding is pending. An attorney, as an officer of the court, may issue and sign a deposition subpoena on behalf of the court if the attorney is authorized to practice in the court.

(4) A subpoena shall state the name of the court from which it is issued, the title of the action, and the case number and shall command each person to whom it is directed to appear and testify at the time and place specified in the subpoena.

(5) A trial subpoena that is issued in a civil action or proceeding (a) at the request of an agency of state government or (b) pursuant to section 25-2304 shall contain the following statement: As a witness in [insert name of court], you are entitled to receive a witness fee in the amount of [insert amount from section 33-139] for each day that you are required to be in court and, if you live more than one mile from the courthouse, you are also entitled to receive mileage at the rate that state employees receive. Ask the lawyer or party who subpoenaed you or the clerk of the court for information about what you should do to receive the fees and mileage to which you are entitled.

(6) Any other trial subpoena in a civil action or proceeding shall contain the following statement: As a witness in [insert name of court], you are entitled to receive a witness fee in the amount of [insert amount from section 33-139] for each day that you are required to be in court and, if you live more than one mile from the courthouse, you are also eligible to receive mileage at the rate that state employees receive. You should have received your witness fee for one day with this subpoena. Ask the lawyer or party who subpoenaed you or the clerk of the court for information about what you should do to receive the additional fees, if any, and mileage to which you are entitled.

(7) The Supreme Court may promulgate forms for subpoenas for use in civil and criminal actions and proceedings. Any such forms shall not be in conflict with the laws governing such matters.

(8) A subpoena may be served by a sheriff or constable. It may also be served by a person who is twenty-one years of age or older and who is not a party to the action or proceeding.

**Source:** R.S.1867, Code § 350, p. 452; R.S.1913, § 7915; C.S.1922, § 8857; C.S.1929, § 20-1223; R.S.1943, § 25-1223; Laws 2017, LB509, § 1.

Effective date August 24, 2017.

**25-1224 Subpoena; to whom directed; production of documents, information, or tangible things; Supreme Court; powers.**

(1) A subpoena commanding an individual to appear and testify at a trial or deposition may command that at the same time and place specified in the subpoena for the individual to appear and testify, the individual must produce designated documents, electronically stored information, or tangible things in the individual's possession, custody, or control. The scope of a command to produce documents, electronically stored information, or tangible things pursuant to this section is governed by the rules of discovery in civil cases.

(2) The Supreme Court may promulgate a rule for discovery in civil cases that specifies the procedures to be followed when a party seeks to serve a deposition subpoena that commands the individual to produce designated documents, electronically stored information, or tangible things in the individual's possession, custody, or control. Any such rule shall not conflict with the laws governing such matters.

**Source:** R.S.1867, Code § 351, p. 452; R.S.1913, § 7916; C.S.1922, § 8858; C.S.1929, § 20-1224; R.S.1943, § 25-1224; Laws 2017, LB509, § 2.

Effective date August 24, 2017.

**25-1225 Repealed. Laws 2017, LB509, § 8.**

**25-1226 Subpoena; manner of service; time.**

(1) A subpoena for a trial or deposition may be served by personal service, which is made by leaving the subpoena with the individual to be served, or by certified mail service, which is made by sending the subpoena by certified mail with a return receipt requested showing to whom and where delivered and the date of delivery. Service by certified mail is made on the date of delivery shown on the signed receipt.

(2) A subpoena for a trial must be served at least two days before the day on which the individual is commanded to appear and testify. A court may shorten the period for service for good cause shown. In determining whether good cause exists, a court may consider all relevant circumstances, including, but not limited to, the need for the testimony, the burden on the individual, and the reason why the individual was not subpoenaed earlier.

**Source:** R.S.1867, Code § 353, p. 452; R.S.1913, § 7918; Laws 1915, c. 148, § 2, p. 318; C.S.1922, § 8860; C.S.1929, § 20-1226; R.S. 1943, § 25-1226; Laws 1953, c. 69, § 1, p. 220; Laws 1957, c. 242, § 16, p. 830; Laws 2017, LB509, § 3.

Effective date August 24, 2017.

**25-1228 Trial subpoena; witness fee; return; cost.**

(1) The witness fee for one day's attendance must be served with a trial subpoena except when the subpoena is issued (a) at the request of an agency of state government or (b) pursuant to section 25-2304.

(2) The person serving the subpoena shall make a return of service stating the name of the individual served, the date and method of service, and, if applicable, that the required witness fee was served with the subpoena. The return of service must be by affidavit unless the subpoena was served by a sheriff or constable. If service was made by certified mail, the signed receipt must be attached to the return of service.

(3) The cost of service of a subpoena is taxable as a court cost, and when service of a subpoena is made by a person other than a sheriff or constable, the cost taxable as a court cost is the lesser of the actual amount incurred for service of process or the statutory fee set for sheriffs in section 33-117.

(4) Except as provided in section 25-2304, the party at whose request a trial subpoena is issued in a civil action or proceeding must pay the witness the fees and mileage to which the witness is entitled under section 33-139. Any fees and mileage that were not paid to the witness before the witness testified must be paid to the witness within a reasonable time after the witness testified.

**Source:** R.S.1867, Code § 355, p. 453; R.S.1913, § 7920; C.S.1922, § 8862; C.S.1929, § 20-1228; R.S.1943, § 25-1228; Laws 1976, LB 750, § 1; Laws 2017, LB509, § 4.  
Effective date August 24, 2017.

**25-1236 Repealed. Laws 2017, LB509, § 8.**

## ARTICLE 13

### JUDGMENTS

#### (h) SUMMARY JUDGMENTS

Section  
25-1332. Motion for summary judgment; proceedings.

#### (h) SUMMARY JUDGMENTS

#### **25-1332 Motion for summary judgment; proceedings.**

(1) The motion shall be served at least ten days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings and the evidence admitted at the hearing show that there is no genuine dispute as to any material fact and that the moving party is entitled to a judgment as a matter of law. The evidence that may be received on a motion for summary judgment includes depositions, answers to interrogatories, admissions, stipulations, and affidavits. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine dispute as to the amount of damages.

(2) A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(a) Citing to particular parts of materials in the record, including depositions, answers to interrogatories, admissions, stipulations, affidavits, or other materials; or

(b) Showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(3) If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by subsection (2) of this section, the court may:

(a) Give an opportunity to properly support or address the fact;

(b) Consider the fact undisputed for purposes of the motion;



(c) Grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show that the movant is entitled to summary judgment; or

(d) Issue any other appropriate order.

**Source:** Laws 1951, c. 65, § 3, p. 199; Laws 2001, LB 489, § 3; Laws 2017, LB204, § 3.  
Effective date August 24, 2017.

**ARTICLE 15**

**EXECUTIONS AND EXEMPTIONS**

(c) PROCEEDINGS IN AID OF EXECUTION

Section

25-1577. Discovery of property of debtor; disobedience of order of court; penalty.

(c) PROCEEDINGS IN AID OF EXECUTION

**25-1577 Discovery of property of debtor; disobedience of order of court; penalty.**

(1) Except as provided in subsection (2) of this section, if any person, party, or witness disobeys an order of the judge or referee, duly served, such person, party, or witness may be punished by the judge as for contempt, and if a party, he or she shall be committed to the jail of the county wherein the proceedings are pending until he or she complies with such order; or, in case he or she has, since the service of such order upon him or her, rendered it impossible for him or her to comply therewith, until he or she has restored to the opposite party what such party has lost by such disobedience, or until discharged by due course of law.

(2) No imprisonment related to the debt collection process shall be allowed unless, after a hearing, a judgment debtor is found to be in willful contempt of court. A judgment debtor shall not be committed to jail for failing to appear pursuant to section 25-1565 unless, after service of an order to appear and show cause as to why the judgment debtor should not be found in contempt for failing to appear, the judgment debtor is found to be in willful contempt.

**Source:** R.S.1867, Code § 546, p. 489; Laws 1875, § 1, p. 39; R.S.1913, § 8125; C.S.1922, § 9061; C.S.1929, § 20-1579; R.S.1943, § 25-1577; Laws 2017, LB259, § 1.  
Operative date August 24, 2017.

**ARTICLE 19**

**REVERSAL OR MODIFICATION OF JUDGMENTS AND ORDERS BY APPELLATE COURTS**

(b) REVIEW ON APPEAL

Section

25-1912. Appeal; civil and criminal actions; procedure; notice of appeal; docketing fee; filing of transcript.

(b) REVIEW ON APPEAL

**25-1912 Appeal; civil and criminal actions; procedure; notice of appeal; docketing fee; filing of transcript.**

(1) The proceedings to obtain a reversal, vacation, or modification of judgments and decrees rendered or final orders made by the district court, including judgments and sentences upon convictions for felonies and misdemeanors, shall be by filing in the office of the clerk of the district court in which such judgment, decree, or final order was rendered, within thirty days after the entry of such judgment, decree, or final order, a notice of intention to prosecute such appeal signed by the appellant or appellants or his, her, or their attorney of record and, except as otherwise provided in sections 25-2301 to 25-2310 and 29-2306 and subsection (4) of section 48-638, by depositing with the clerk of the district court the docket fee required by section 33-103.

(2) A notice of appeal or docket fee filed or deposited after the announcement of a decision or final order but before the 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.

(3) The running of the time for filing a notice of appeal shall be terminated as to all parties (a) by a timely motion for a new trial under section 25-1144.01, (b) by a timely motion to alter or amend a judgment under section 25-1329, or (c) by a timely motion to set aside the verdict or judgment under section 25-1315.02, and the full time for appeal fixed in subsection (1) of this section commences to run from the entry of the order ruling upon the motion filed pursuant to subdivision (a), (b), or (c) of this subsection. When any motion terminating the time for filing a notice of appeal is timely filed by any party, a notice of appeal filed before the court announces its decision upon the terminating motion shall have no effect, whether filed before or after the timely filing of the terminating motion. A new notice of appeal shall be filed within the prescribed time after the entry of the order ruling on the motion. No additional fees are required for such filing. A notice of appeal filed after the court announces its decision or order on the terminating motion but before the entry of the order is treated as filed on the date of and after the entry of the order.

(4) Except as otherwise provided in subsection (3) of this section, sections 25-2301 to 25-2310 and 29-2306, and subsection (4) of section 48-638, an appeal shall be deemed perfected and the appellate court shall have jurisdiction of the cause when such notice of appeal has been filed and such docket fee deposited in the office of the clerk of the district court, and after being perfected no appeal shall be dismissed without notice, and no step other than the filing of such notice of appeal and the depositing of such docket fee shall be deemed jurisdictional.

(5) The clerk of the district court shall forward such docket fee and a certified copy of such notice of appeal to the Clerk of the Supreme Court, and the Clerk of the Supreme Court shall docket such appeal.

(6) Within thirty days after the date of filing of notice of appeal, the clerk of the district court shall prepare and file with the Clerk of the Supreme Court a transcript certified as a true copy of the proceedings contained therein. The Supreme Court shall, by rule, specify the method of ordering the transcript and the form and content of the transcript. Neither the form nor substance of such transcript shall affect the jurisdiction of the Court of Appeals or Supreme Court.

(7) Nothing in this section shall prevent any person from giving supersedeas bond in the district court in the time and manner provided in section 25-1916

nor affect the right of a defendant in a criminal case to be admitted to bail pending the review of such case in the Court of Appeals or Supreme Court.

**Source:** Laws 1907, c. 162, § 1, p. 495; R.S.1913, § 8186; Laws 1917, c. 140, § 1, p. 326; C.S.1922, § 9138; C.S.1929, § 20-1912; Laws 1941, c. 32, § 1, p. 141; C.S.Supp.,1941, § 20-1912; R.S.1943, § 25-1912; Laws 1947, c. 87, § 1, p. 265; Laws 1961, c. 35, § 1, p. 388; Laws 1981, LB 411, § 5; Laws 1982, LB 720, § 2; Laws 1982, LB 722, § 2; Laws 1986, LB 530, § 2; Laws 1986, LB 529, § 25; Laws 1991, LB 732, § 52; Laws 1995, LB 127, § 1; Laws 1997, LB 398, § 1; Laws 1999, LB 43, § 8; Laws 1999, LB 689, § 1; Laws 2000, LB 921, § 15; Laws 2017, LB172, § 2.  
Operative date January 1, 2018.

Cross References

For amount of docket fee, see section 33-103.

## ARTICLE 21

### ACTIONS AND PROCEEDINGS IN PARTICULAR CASES

#### (e) FORECLOSURE OF MORTGAGES

Section

25-2154. Satisfaction or payment; certificate; delivery to register of deeds; duties of clerk of district court; fee of register of deeds.

#### (II) EMERGENCY RESPONSE TO ASTHMA OR ALLERGIC REACTIONS

25-21,280. School, educational service unit, early childhood education program, school nurse, medication aide, and nonmedical staff person; physician; health care professional; pharmacist; immunity; when.

#### (e) FORECLOSURE OF MORTGAGES

**25-2154 Satisfaction or payment; certificate; delivery to register of deeds; duties of clerk of district court; fee of register of deeds.**

In all cases of foreclosure of mortgages in the several counties in the state, it shall be the duty of the clerk of the district court, on the satisfaction or payment of the amount of the decree, to forward to the register of deeds a certificate setting forth the names of parties, plaintiff and defendant, descriptions of the premises mentioned in the decree, and the book and page where the mortgage foreclosed is recorded. For such certificate the clerk of the district court shall collect the fee required pursuant to section 33-109 for recording the certificate. Such amount shall be taxed as part of the costs in the case, and such sum shall be paid to the register of deeds as the fee for recording the certificate.

**Source:** Laws 1887, c. 63, § 1, p. 564; R.S.1913, § 5614; C.S.1922, § 4933; C.S.1929, § 26-1010; R.S.1943, § 25-2154; Laws 1951, c. 106, § 1, p. 512; Laws 1959, c. 140, § 3, p. 546; Laws 1971, LB 495, § 1; Laws 2012, LB14, § 3; Laws 2017, LB152, § 1; Laws 2017, LB268, § 2.

Effective date August 24, 2017.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB152, section 1, with LB268, section 2, to reflect all amendments.

## (II) EMERGENCY RESPONSE TO ASTHMA OR ALLERGIC REACTIONS

**25-21,280 School, educational service unit, early childhood education program, school nurse, medication aide, and nonmedical staff person; physician; health care professional; pharmacist; immunity; when.**

(1) Any person employed by a school approved or accredited by the State Department of Education, employed by an educational service unit and working in a school approved or accredited by the department, or employed by an early childhood education program approved by the department who serves as a school nurse or medication aide or who has been designated and trained by the school, educational service unit, or program as a nonmedical staff person to implement the emergency response to life-threatening asthma or systemic allergic reactions protocols adopted by the school, educational service unit, or program shall be immune from civil liability for any act or omission in rendering emergency care for a person experiencing a potentially life-threatening asthma or allergic reaction event on school grounds, in a vehicle being used for school purposes, in a vehicle being used for educational service unit purposes, at a school-sponsored activity or athletic event, at a facility used by the early childhood education program, in a vehicle being used for early childhood education program purposes, or at an activity sponsored by the early childhood education program which results in damage or injury unless such damage or injury was caused by the willful or wanton act or omission of such employee.

(2) The individual immunity granted by subsection (1) of this section shall not extend to the school district, educational service unit, or early childhood education program and shall not extend to any act or omission of such employee which results in damage or injury if the damage or injury is caused by such employee while impaired by alcohol or any controlled substance enumerated in section 28-405.

(3) Any school nurse, such nurse's designee, or other designated adult described in section 79-224 shall be immune from civil liability for any act or omission described in such section which results in damage or injury unless such damage or injury was caused by the willful or wanton act or omission of such school nurse, nurse's designee, or designated adult.

(4) A physician or other health care professional may issue a non-patient-specific prescription for medication for response to life-threatening asthma or anaphylaxis to a school, an educational service unit, or an early childhood education program as described in subsection (1) of this section. The physician or other health care professional shall be immune from liability for issuing such prescription unless he or she does not exercise reasonable care under the circumstances in signing the prescription. In no circumstance shall a physician or other health care professional be liable for the act or omission of another who provides or in any way administers the medication prescribed by the physician or other health care professional.

(5) A pharmacist may dispense medication pursuant to a non-patient-specific prescription for response to life-threatening asthma or anaphylaxis to a school, an educational service unit, or an early childhood education program as described in subsection (1) of this section. The pharmacist shall be immune from liability for dispensing medication pursuant to a non-patient-specific prescription unless the pharmacist does not exercise reasonable care under the circumstances in dispensing the medication. In no circumstance shall a phar-

macist be liable for the act or omission of another who provides or in any way administers the medication dispensed by the pharmacist.

(6) For purposes of this section, the name of the school, educational service unit, or early childhood education program shall serve as the patient name on the non-patient-specific prescription.

**Source:** Laws 2004, LB 868, § 2; Laws 2005, LB 361, § 30; Laws 2006, LB 1148, § 2; Laws 2017, LB487, § 1.  
Effective date August 24, 2017.

## ARTICLE 25

### UNIFORM PROCEDURE FOR ACQUIRING PRIVATE PROPERTY FOR PUBLIC USE

Section

25-2501. Intent and purpose.

#### **25-2501 Intent and purpose.**

It is the intent and purpose of sections 25-2501 to 25-2506 to establish a uniform procedure to be used in acquiring private property for a public purpose by the State of Nebraska and its political subdivisions and by all privately owned public utility corporations and common carriers which have been granted the power of eminent domain. Such sections shall not apply to:

(1) Water transmission and distribution pipelines and their appurtenances and common carrier pipelines and their appurtenances;

(2) Public utilities and cities of all classes and villages when acquiring property for a proposed project involving the acquisition of rights or interests in ten or fewer separately owned tracts or when the acquisition is within the corporate limits of any city or village;

(3) Sanitary and improvement districts organized under sections 31-727 to 31-762 when acquiring easements for a proposed project involving the acquisition of rights or interests in ten or fewer separately owned tracts;

(4) Counties and municipalities which acquire property through the process of platting or subdivision or for street or highway construction or improvements;

(5) Common carriers subject to regulation by the Federal Railroad Administration of the United States Department of Transportation; or

(6) The Nebraska Department of Transportation when acquiring property for highway construction or improvements.

**Source:** Laws 1973, LB 187, § 1; Laws 1978, LB 917, § 1; Laws 1994, LB 441, § 2; Laws 2002, LB 176, § 1; Laws 2017, LB339, § 81.  
Operative date July 1, 2017.

## ARTICLE 27

### PROVISIONS APPLICABLE TO COUNTY COURTS

#### (g) DOMESTIC RELATIONS MATTERS

Section

25-2740. Domestic relations matters; district, county, and separate juvenile courts; jurisdiction; procedure.

## (g) DOMESTIC RELATIONS MATTERS

**25-2740 Domestic relations matters; district, county, and separate juvenile courts; jurisdiction; procedure.**

(1) For purposes of this section:

(a) Domestic relations matters means proceedings under sections 28-311.09 and 28-311.10 (including harassment protection orders and valid foreign harassment protection orders), sections 28-311.11 and 28-311.12 (including sexual assault protection orders and valid foreign sexual assault protection orders), the Conciliation Court Law and sections 42-347 to 42-381 (including dissolution, separation, annulment, custody, and support), section 43-512.04 (including child support or medical support), section 42-924 (including domestic protection orders), sections 43-1401 to 43-1418 (including paternity determinations and parental support), and sections 43-1801 to 43-1803 (including grandparent visitation); and

(b) Paternity or custody determinations means proceedings to establish the paternity of a child under sections 43-1411 to 43-1418 or proceedings to determine custody of a child under section 42-364.

(2) Except as provided in subsection (3) of this section, in domestic relations matters, a party shall file his or her petition or complaint and all other court filings with the clerk of the district court. The party shall state in the petition or complaint whether such party requests that the proceeding be heard by a county court judge or by a district court judge. If the party requests the case be heard by a county court judge, the county court judge assigned to hear cases in the county in which the matter is filed at the time of the hearing is deemed appointed by the district court and the consent of the county court judge is not required. Such proceeding is considered a district court proceeding, even if heard by a county court judge, and an order or judgment of the county court in a domestic relations matter has the force and effect of a district court judgment. The testimony in a domestic relations matter heard before a county court judge shall be preserved as provided in section 25-2732.

(3) In addition to the jurisdiction provided for paternity or custody determinations under subsection (2) of this section, a county court or separate juvenile court which already has jurisdiction over the child whose paternity or custody is to be determined has jurisdiction over such paternity or custody determination.

**Source:** Laws 1997, LB 229, § 2; Laws 1998, LB 218, § 1; Laws 1998, LB 1041, § 2; Laws 2004, LB 1207, § 16; Laws 2008, LB280, § 2; Laws 2008, LB1014, § 14; Laws 2017, LB289, § 1.  
Effective date August 24, 2017.

## Cross References

Conciliation Court Law, see section 42-802.

## CHAPTER 28

### CRIMES AND PUNISHMENTS

#### Article.

1. Provisions Applicable to Offenses Generally.
  - (a) General Provisions. 28-101 to 28-105.01.
2. Inchoate Offenses. 28-201, 28-202.
3. Offenses against the Person.
  - (a) General Provisions. 28-303 to 28-311.12.
  - (b) Adult Protective Services Act. 28-358.01, 28-372.
4. Drugs and Narcotics. 28-401 to 28-472.
6. Offenses Involving Fraud. 28-612.
7. Offenses Involving the Family Relation. 28-712 to 28-718.
8. Offenses Relating to Morals. 28-802 to 28-831.
9. Offenses Involving Integrity and Effectiveness of Government Operation. 28-915, 28-915.01.
12. Offenses against Public Health and Safety. 28-1201, 28-1206.
13. Miscellaneous Offenses.
  - (s) Public Protection Act. 28-1356.

#### ARTICLE 1

#### PROVISIONS APPLICABLE TO OFFENSES GENERALLY

##### (a) GENERAL PROVISIONS

Section	
28-101.	Code, how cited.
28-104.	Offense; crime; synonymous.
28-105.	Felonies; classification of penalties; sentences; where served; eligibility for probation.
28-105.01.	Death penalty imposition; restriction on person under eighteen years; restriction on person with intellectual disability; sentencing procedure.

##### (a) GENERAL PROVISIONS

#### **28-101 Code, how cited.**

Sections 28-101 to 28-1357 and 28-1601 to 28-1603 shall be known and may be cited as the Nebraska Criminal Code.

**Source:** Laws 1977, LB 38, § 1; Laws 1980, LB 991, § 8; Laws 1982, LB 465, § 1; Laws 1985, LB 371, § 1; Laws 1985, LB 406, § 1; Laws 1986, LB 956, § 12; Laws 1986, LB 969, § 1; Laws 1987, LB 451, § 1; Laws 1988, LB 170, § 1; Laws 1988, LB 463, § 41; Laws 1989, LB 372, § 1; Laws 1990, LB 50, § 10; Laws 1990, LB 571, § 2; Laws 1990, LB 1018, § 1; Laws 1991, LB 135, § 1; Laws 1991, LB 477, § 2; Laws 1992, LB 1098, § 5; Laws 1992, LB 1184, § 8; Laws 1994, LB 988, § 1; Laws 1994, LB 1035, § 1; Laws 1994, LB 1129, § 1; Laws 1995, LB 371, § 1; Laws 1995, LB 385, § 11; Laws 1996, LB 908, § 2; Laws 1997, LB 90, § 1; Laws 1997, LB 814, § 6; Laws 1998, LB 218, § 2; Laws 1999, LB 6, § 1; Laws 1999, LB 49, § 1; Laws 1999, LB 163, § 1; Laws 1999, LB 511, § 1; Laws 2002, LB 276, § 1; Laws 2002, LB 824, § 1; Laws 2003, LB 17, § 1; Laws 2003, LB 43, § 8; Laws 2003,

LB 273, § 2; Laws 2004, LB 943, § 1; Laws 2006, LB 57, § 1; Laws 2006, LB 287, § 4; Laws 2006, LB 1086, § 6; Laws 2006, LB 1199, § 1; Laws 2007, LB142, § 1; Laws 2008, LB764, § 1; Laws 2008, LB1055, § 1; Laws 2009, LB63, § 2; Laws 2009, LB97, § 9; Laws 2009, LB155, § 1; Laws 2010, LB252, § 1; Laws 2010, LB594, § 1; Laws 2010, LB894, § 1; Laws 2010, LB1103, § 11; Laws 2011, LB20, § 1; Laws 2011, LB226, § 1; Laws 2011, LB667, § 1; Laws 2013, LB3, § 1; Laws 2013, LB44 § 1; Laws 2014, LB403, § 1; Laws 2014, LB863, § 15; Laws 2015, LB390, § 1; Laws 2016, LB136, § 1; Laws 2016, LB934, § 1; Laws 2016, LB1009, § 1; Laws 2016, LB1106, § 3; Laws 2017, LB289, § 2; Laws 2017, LB487, § 2.  
 Effective date August 24, 2017.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB289, section 2, with LB487, section 2, to reflect all amendments.

**28-104 Offense; crime; synonymous.**

The terms offense and crime are synonymous as used in this code and mean a violation of, or conduct defined by, any statute for which a fine, imprisonment, or death may be imposed.

**Source:** Laws 1977, LB 38, § 4; Laws 2015, LB268, § 5; Referendum 2016, No. 426.

**Note:** The changes made to section 28-104 by Laws 2015, LB 268, section 5, have been omitted because of the vote on the referendum at the November 2016 general election.

**28-105 Felonies; classification of penalties; sentences; where served; eligibility for probation.**

(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, felonies are divided into ten classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class I felony . . . . .	Death
Class IA felony . . . . .	Life imprisonment
Class IB felony . . . . .	Maximum—life imprisonment Minimum—twenty years imprisonment
Class IC felony . . . . .	Maximum—fifty years imprisonment Mandatory minimum—five years imprisonment
Class ID felony . . . . .	Maximum—fifty years imprisonment Mandatory minimum—three years imprisonment
Class II felony . . . . .	Maximum—fifty years imprisonment Minimum—one year imprisonment
Class IIA felony . . . . .	Maximum—twenty years imprisonment Minimum—none
Class III felony . . . . .	Maximum—four years imprisonment and two years post-release supervision or twenty-five thousand dollars fine, or both Minimum—none for imprisonment and nine months post-release supervision if imprisonment is imposed



**PROVISIONS APPLICABLE TO OFFENSES GENERALLY § 28-105.01**

Class IIIA felony . . . . .	Maximum—three years imprisonment and eighteen months post-release supervision or ten thousand dollars fine, or both Minimum—none for imprisonment and nine months post-release supervision if imprisonment is imposed
Class IV felony . . . . .	Maximum—two years imprisonment and twelve months post-release supervision or ten thousand dollars fine, or both Minimum—none for imprisonment and nine months post-release supervision if imprisonment is imposed

(2) All sentences for maximum terms of imprisonment for one year or more for felonies shall be served in institutions under the jurisdiction of the Department of Correctional Services. All sentences for maximum terms of imprisonment of less than one year shall be served in the county jail.

(3) Nothing in this section shall limit the authority granted in sections 29-2221 and 29-2222 to increase sentences for habitual criminals.

(4) A person convicted of a felony for which a mandatory minimum sentence is prescribed shall not be eligible for probation.

(5) All sentences of post-release supervision shall be served under the jurisdiction of the Office of Probation Administration and shall be subject to conditions imposed pursuant to section 29-2262 and subject to sanctions authorized pursuant to section 29-2266.02.

(6) Any person who is sentenced to imprisonment for a Class I, IA, IB, IC, ID, II, or IIA felony and sentenced concurrently or consecutively to imprisonment for a Class III, IIIA, or IV felony shall not be subject to post-release supervision pursuant to subsection (1) of this section.

(7) Any person who is sentenced to imprisonment for a Class III, IIIA, or IV felony committed prior to August 30, 2015, and sentenced concurrently or consecutively to imprisonment for a Class III, IIIA, or IV felony committed on or after August 30, 2015, shall not be subject to post-release supervision pursuant to subsection (1) of this section.

(8) The changes made to the penalties for Class III, IIIA, and IV felonies by Laws 2015, LB605, do not apply to any offense committed prior to August 30, 2015, as provided in section 28-116.

**Source:** Laws 1977, LB 38, § 5; Laws 1989, LB 592, § 1; Laws 1995, LB 371, § 2; Laws 1997, LB 364, § 1; Laws 1998, LB 900, § 1; Laws 1998, LB 1266, § 1; Laws 2002, Third Spec. Sess., LB 1, § 1; Laws 2011, LB12, § 1; Laws 2015, LB268, § 6; Laws 2015, LB605, § 6; Laws 2016, LB1094, § 2; Referendum 2016, No. 426.

**Note:** The changes made to section 28-105 by Laws 2015, LB268, section 6, have been omitted because of the vote on the referendum at the November 2016 general election.

**28-105.01 Death penalty imposition; restriction on person under eighteen years; restriction on person with intellectual disability; sentencing procedure.**

(1) Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person who was under the age of eighteen years at the time of the commission of the crime.

(2) Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person with an intellectual disability.

(3) As used in subsection (2) of this section, intellectual disability means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior. An intelligence quotient of seventy or below on a reliably administered intelligence quotient test shall be presumptive evidence of intellectual disability.

(4) If (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 defendant waives his or her right to a jury determination of the alleged aggravating circumstances, the court shall hold a hearing prior to any sentencing determination proceeding as provided in section 29-2521 upon a verified motion of the defense requesting a ruling that the penalty of death be precluded under subsection (2) of this section. If the court finds, by a preponderance of the evidence, that the defendant is a person with an intellectual disability, the death sentence shall not be imposed. A ruling by the court that the evidence of diminished intelligence introduced by the defendant does not preclude the death penalty under subsection (2) of this section shall not restrict the defendant's opportunity to introduce such evidence at the sentencing determination proceeding as provided in section 29-2521 or to argue that such evidence should be given mitigating significance.

**Source:** Laws 1982, LB 787, § 23; Laws 1998, LB 1266, § 2; Laws 2002, Third Spec. Sess., LB 1, § 2; Laws 2013, LB23, § 3; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 28-105.01 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

## ARTICLE 2

### INCHOATE OFFENSES

#### Section

28-201. Criminal attempt; conduct; penalties.

28-202. Conspiracy, defined; penalty.

#### **28-201 Criminal attempt; conduct; penalties.**

(1) A person shall be guilty of an attempt to commit a crime if he or she:

(a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as he or she believes them to be; or

(b) Intentionally engages in conduct which, under the circumstances as he or she believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his or her commission of the crime.

(2) When causing a particular result is an element of the crime, a person shall be guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, he or she intentionally engages in

conduct which is a substantial step in a course of conduct intended or known to cause such a result.

(3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

(4) Criminal attempt is:

(a) A Class II felony when the crime attempted is a Class I, IA, IB, IC, or ID felony;

(b) A Class IIA felony when the crime attempted is a Class II felony;

(c) A Class IIIA felony when the crime attempted is a Class IIA felony;

(d) A Class IV felony when the crime attempted is a Class III or IIIA felony;

(e) A Class I misdemeanor when the crime attempted is a Class IV felony;

(f) A Class II misdemeanor when the crime attempted is a Class I misdemeanor; and

(g) A Class III misdemeanor when the crime attempted is a Class II misdemeanor.

**Source:** Laws 1977, LB 38, § 10; Laws 1997, LB 364, § 2; Laws 1998, LB 1266, § 3; Laws 2010, LB712, § 7; Laws 2010, LB771, § 2; Laws 2012, LB799, § 1; Laws 2015, LB268, § 7; Laws 2015, LB605, § 8; Referendum 2016, No. 426.

**Note:** The changes made to section 28-201 by Laws 2015, LB 268, section 7, have been omitted because of the vote on the referendum at the November 2016 general election.

#### **28-202 Conspiracy, defined; penalty.**

(1) A person shall be guilty of criminal conspiracy if, with intent to promote or facilitate the commission of a felony:

(a) He agrees with one or more persons that they or one or more of them shall engage in or solicit the conduct or shall cause or solicit the result specified by the definition of the offense; and

(b) He or another person with whom he conspired commits an overt act in pursuance of the conspiracy.

(2) If a person knows that one with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring to commit such crime with such other person or persons whether or not he knows their identity.

(3) If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

(4) Conspiracy is a crime of the same class as the most serious offense which is an object of the conspiracy, except that conspiracy to commit a Class I felony is a Class II felony.

A person prosecuted for a criminal conspiracy shall be acquitted if such person proves by a preponderance of the evidence that his or her conduct occurred in response to an entrapment.

**Source:** Laws 1977, LB 38, § 11; Laws 2015, LB268, § 8; Referendum 2016, No. 426.

**Note:** The changes made to section 28-202 by Laws 2015, LB 268, section 8, have been omitted because of the vote on the referendum at the November 2016 general election.

**ARTICLE 3**  
**OFFENSES AGAINST THE PERSON**

(a) GENERAL PROVISIONS

## Section

- 28-303. Murder in the first degree; penalty.  
 28-311.04. Stalking; violations; penalties.  
 28-311.11. Sexual assault protection order; violation; penalty; procedure; renewal; enforcement.  
 28-311.12. Foreign sexual assault protection order; enforcement.

(b) ADULT PROTECTIVE SERVICES ACT

- 28-358.01. Isolation, defined.  
 28-372. Report of abuse, neglect, or exploitation; required; contents; notification; toll-free number established.

(a) GENERAL PROVISIONS

**28-303 Murder in the first degree; penalty.**

A person commits murder in the first degree if he or she kills another person (1) purposely and with deliberate and premeditated malice, or (2) in the perpetration of or attempt to perpetrate any sexual assault in the first degree, arson, robbery, kidnapping, hijacking of any public or private means of transportation, or burglary, or (3) by administering poison or causing the same to be done; or if by willful and corrupt perjury or subornation of the same he or she purposely procures the conviction and execution of any innocent person. The determination of whether murder in the first degree shall be punished as a Class I or Class IA felony shall be made pursuant to sections 29-2519 to 29-2524.

**Source:** Laws 1977, LB 38, § 18; Laws 2002, Third Spec. Sess., LB 1, § 3; Laws 2015, LB268, § 9; Referendum 2016, No. 426.

**Note:** The changes made to section 28-303 by Laws 2015, LB 268, section 9, have been omitted because of the vote on the referendum at the November 2016 general election.

**28-311.04 Stalking; violations; penalties.**

(1) Except as provided in subsection (2) of this section, any person convicted of violating section 28-311.03 is guilty of a Class I misdemeanor.

(2) Any person convicted of violating section 28-311.03 is guilty of a Class IIIA felony if:

(a) The person has a prior conviction under such section or a substantially conforming criminal violation within the last seven years;

(b) The victim is under sixteen years of age;

(c) The person possessed a deadly weapon at any time during the violation;

(d) The person was also in violation of section 28-311.09, 28-311.11, 42-924, or 42-925, or in violation of a valid foreign harassment protection order recognized pursuant to section 28-311.10 or a valid foreign sexual assault protection order recognized pursuant to section 28-311.12 at any time during the violation; or

(e) The person has been convicted of any felony in this state or has been convicted of a crime in another jurisdiction which, if committed in this state,

would constitute a felony and the victim or a family or household member of the victim was also the victim of such previous felony.

**Source:** Laws 1992, LB 1098, § 3; Laws 1993, LB 299, § 3; Laws 2006, LB 1113, § 23; Laws 2015, LB605, § 16; Laws 2017, LB289, § 3. Effective date August 24, 2017.

**28-311.11 Sexual assault protection order; violation; penalty; procedure; renewal; enforcement.**

(1) Any victim of a sexual assault offense may file a petition and affidavit for a sexual assault protection order as provided in subsection (3) of this section. Upon the filing of such a petition and affidavit in support thereof, the court may issue a sexual assault protection order without bond enjoining the respondent from (a) imposing any restraint upon the person or liberty of the petitioner, (b) harassing, threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner, or (c) telephoning, contacting, or otherwise communicating with the petitioner.

(2) The petition for a sexual assault protection order shall state the events and dates of acts constituting the sexual assault offense.

(3) A petition for a sexual assault protection order shall be filed with the clerk of the district court and the proceeding may be heard by the county court or the district court as provided in section 25-2740.

(4) A petition for a sexual assault protection order may not be withdrawn except upon order of the court. A sexual assault protection order shall specify that it is effective for a period of one year unless renewed pursuant to subsection (11) of this section or otherwise dismissed or modified by the court. Any person who knowingly violates a sexual assault protection order after service or notice as described in subdivision (8)(b) of this section shall be guilty of a Class I misdemeanor except that for any second violation of a sexual assault protection order within a twelve-month period, or any third or subsequent violation, whenever committed, such person shall be guilty of a Class IV felony.

(5)(a) Fees to cover costs associated with the filing of a petition for issuance or renewal of a sexual assault protection order or the issuance or service of a sexual assault protection order seeking only the relief provided by this section shall not be charged, except that a court may assess such fees and costs if the court finds, by clear and convincing evidence, that the statements contained in the petition were false and that the sexual assault protection order was sought in bad faith.

(b) A court may also assess costs associated with the filing of a petition for issuance or renewal of a sexual assault protection order or the issuance or service of a sexual assault protection order seeking only the relief provided by this section against the respondent.

(6) The clerk of the district court shall make available standard application and affidavit forms for issuance and renewal of a sexual assault protection order with instructions for completion to be used by a petitioner. The clerk and his or her employees shall not provide assistance in completing the forms. The State Court Administrator shall adopt and promulgate the standard application and affidavit forms provided for in this section as well as the standard temporary and final sexual assault protection order forms and provide a copy

of such forms to all clerks of the district courts in this state. Such standard temporary and final sexual assault protection order forms shall be the only forms used in this state.

(7) A sexual assault protection order may be issued or renewed ex parte without notice to the respondent if it reasonably appears from the specific facts shown by affidavit of the petitioner that irreparable harm, loss, or damage will result before the matter can be heard on notice. If the specific facts included in the affidavit (a) do not show that the petitioner will suffer irreparable harm, loss, or damage or (b) show that, for any other compelling reason, an ex parte order should not be issued or renewed, the court may forthwith cause notice of the application to be given to the respondent stating that he or she may show cause, not more than fourteen days after service, why such order should not be entered. If such ex parte order is issued or renewed without notice to the respondent, the court shall forthwith cause notice of the petition and order and a form with which to request a show-cause hearing to be given the respondent stating that, upon service on the respondent, the order shall remain in effect for a period of one year unless the respondent shows cause why the order should not remain in effect for a period of one year. If the respondent wishes to appear and show cause why the order should not remain in effect for a period of one year, he or she shall affix his or her current address, telephone number, and signature to the form and return it to the clerk of the district court within five days after service upon him or her. Upon receipt of the request for a show-cause hearing, the court shall immediately schedule a show-cause hearing to be held within thirty days after the receipt of the request for a show-cause hearing and shall notify the petitioner and respondent of the hearing date.

(8)(a) Upon the issuance or renewal of any sexual assault protection order, the clerk of the court shall forthwith provide the petitioner, without charge, with two certified copies of such order. The clerk of the court shall also forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of such order and one copy each of the sheriff's return thereon. The clerk of the court shall also forthwith provide a copy of the sexual assault protection order to the sheriff's office in the county where the respondent may be personally served together with instructions for service. Upon receipt of the order and instructions for service, such sheriff's office shall forthwith serve the sexual assault protection order upon the respondent and file its return thereon with the clerk of the court which issued the sexual assault protection order within fourteen days of the issuance of the initial or renewed sexual assault protection order. If any sexual assault protection order is dismissed or modified by the court, the clerk of the court shall forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of the order of dismissal or modification.

(b) If the respondent is present at a hearing convened pursuant to this section and the sexual assault protection order is not dismissed, such respondent shall be deemed to have notice by the court at such hearing that the protection order will be granted and remain in effect and further service of such notice described in this subsection shall not be required for purposes of prosecution under this section. If the respondent has been properly served with the ex parte order and fails to appear at the hearing, the temporary order shall be deemed to be granted and remain in effect and the service of the ex parte order will serve as notice required under this section.

(9) A peace officer shall, with or without a warrant, arrest a person if (a) the officer has probable cause to believe that the person has committed a violation of a sexual assault protection order issued pursuant to this section or a violation of a valid foreign sexual assault protection order recognized pursuant to section 28-311.12 and (b) a petitioner under this section provides the peace officer with a copy of such order or the peace officer determines that such an order exists after communicating with the local law enforcement agency.

(10) A peace officer making an arrest pursuant to subsection (9) of this section shall take such person into custody and take such person before the county court or the court which issued the sexual assault protection order within a reasonable time. At such time the court shall establish the conditions of such person's release from custody, including the determination of bond or recognizance, as the case may be. The court shall issue an order directing that such person shall have no contact with the alleged victim of the sexual assault offense.

(11) An order issued under subsection (1) of this section may be renewed annually. To request renewal of the order, the petitioner shall file a petition for renewal and affidavit in support thereof at least forty-five days prior to the date the order is set to expire. The petition for renewal shall state the reasons a renewal is sought and shall be filed with the clerk of the district court, and the proceeding thereon may be heard by the county court or the district court as provided in section 25-2740. A petition for renewal will otherwise be governed in accordance with the procedures set forth in subsections (4) through (10) of this section.

(12) For purposes of this section, sexual assault offense means:

(a) Conduct amounting to sexual assault under section 28-319 or 28-320 or sexual assault of a child under section 28-319.01 or 28-320.01 or an attempt to commit any of such offenses; or

(b) Subjecting or attempting to subject another person to sexual contact or sexual penetration without his or her consent, as such terms are defined in section 28-318.

**Source:** Laws 2017, LB289, § 4.

Effective date August 24, 2017.

**28-311.12 Foreign sexual assault protection order; enforcement.**

(1) A valid foreign sexual assault protection order or an order similar to a sexual assault protection order issued by a court of another state, territory, possession, or tribe shall be accorded full faith and credit by the courts of this state and enforced as if it were issued in this state.

(2) A foreign sexual assault protection order issued by a court of another state, territory, possession, or tribe shall be valid if:

(a) The issuing court had jurisdiction over the parties and matter under the law of such state, territory, possession, or tribe;

(b) The respondent was given reasonable notice and an opportunity to be heard sufficient to protect the respondent's right to due process before the order was issued; and

(c) The sexual assault protection order from another jurisdiction has not been rendered against both the petitioner and the respondent, unless: (i) The respondent filed a cross or counter petition, complaint, or other written pleading

seeking such a sexual assault protection order; and (ii) the issuing court made specific findings of sexual assault offenses against both the petitioner and respondent and determined that each party was entitled to such an order.

(3) There is a presumption of the validity of the foreign protection order when the order appears authentic on its face.

(4) A peace officer may rely upon a copy of any putative valid foreign sexual assault protection order which has been provided to the peace officer by any source.

**Source:** Laws 2017, LB289, § 5.

Effective date August 24, 2017.

#### (b) ADULT PROTECTIVE SERVICES ACT

##### **28-358.01 Isolation, defined.**

(1) Isolation means intentional acts (a) committed for the purpose of preventing, and which do prevent, a vulnerable adult or senior adult from having contact with family, friends, or concerned persons, (b) committed to prevent a vulnerable adult or senior adult from receiving his or her mail or telephone calls, (c) of physical or chemical restraint of a vulnerable adult or senior adult committed for purposes of preventing contact with visitors, family, friends, or other concerned persons, or (d) which restrict, place, or confine a vulnerable adult or senior adult in a restricted area for purposes of social deprivation or preventing contact with family, friends, visitors, or other concerned persons.

(2) Isolation does not include (a) medical isolation prescribed by a licensed physician caring for the vulnerable adult or senior adult, (b) action taken in compliance with a harassment protection order issued pursuant to section 28-311.09, a valid foreign harassment protection order recognized pursuant to section 28-311.10, a sexual assault protection order issued pursuant to section 28-311.11, a valid foreign sexual assault protection order recognized pursuant to section 28-311.12, an order issued pursuant to section 42-924, an ex parte order issued pursuant to section 42-925, an order excluding a person from certain premises issued pursuant to section 42-357, or a valid foreign protection order recognized pursuant to section 42-931, or (c) action authorized by an administrator of a nursing home pursuant to section 71-6021.

**Source:** Laws 2016, LB934, § 5; Laws 2017, LB289, § 6.

Effective date August 24, 2017.

##### **28-372 Report of abuse, neglect, or exploitation; required; contents; notification; toll-free number established.**

(1) When any physician, psychologist, physician assistant, nurse, nurse aide, 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, neglect, or exploitation or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse, neglect, or exploitation, 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, neglect, or



exploitation if such person has reasonable cause to believe that a vulnerable adult has been subjected to abuse, neglect, or exploitation or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse, neglect, or exploitation.

(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, neglect, or exploitation or the conditions and circumstances which would reasonably be expected to result in such abuse, neglect, or exploitation; (d) any evidence of previous abuse, neglect, or exploitation, including the nature and extent of the abuse, neglect, or exploitation; 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, neglect, or exploitation and the identity of the perpetrator or perpetrators.

(3) Any law enforcement agency receiving a report of abuse, neglect, or exploitation shall notify the department no later than the next working day by telephone or mail.

(4) A report of abuse, neglect, or exploitation 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, neglect, or exploitation.

**Source:** Laws 1988, LB 463, § 25; Laws 1996, LB 1044, § 66; Laws 2006, LB 994, § 52; Laws 2007, LB296, § 32; Laws 2012, LB1051, § 10; Laws 2017, LB417, § 2.  
Effective date August 24, 2017.

**ARTICLE 4**

**DRUGS AND NARCOTICS**

Section

28-401. Terms, defined.

28-401.01. Act, how cited.

28-405. Controlled substances; schedules; enumerated.

28-410. Records of registrants; inventory; violation; penalty; storage.

28-411. Controlled substances; records; by whom kept; contents; compound controlled substances; duties.

28-414. Controlled substance; Schedule II; prescription; contents.

28-414.01. Controlled substance; Schedule III, IV, or V; prescription; contents.

28-414.03. Controlled substances; maintenance of records; label.

28-416. Prohibited acts; violations; penalties.

28-441. Drug paraphernalia; use or possession; unlawful; penalty.

28-442. Drug paraphernalia; deliver or manufacture; unlawful; exception; penalty.

28-470. Naloxone; authorized activities; immunity from administrative action, criminal prosecution, or civil liability.

28-472. Drug overdose; exception from criminal liability; conditions.

**28-401 Terms, defined.**

As used in the Uniform Controlled Substances Act, unless the context otherwise requires:

(1) Administer means to directly apply a controlled substance by injection, inhalation, ingestion, or any other means to the body of a patient or research subject;

(2) Agent means an authorized person who acts on behalf of or at the direction of another person but does not include a common or contract carrier, public warehouse keeper, or employee of a carrier or warehouse keeper;

(3) Administration means the Drug Enforcement Administration of the United States Department of Justice;

(4) Controlled substance means a drug, biological, substance, or immediate precursor in Schedules I to V of section 28-405. Controlled substance does 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, 2014, and the law of this state, be lawfully sold over the counter without a prescription;

(5) Counterfeit substance means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

(6) Department means the Department of Health and Human Services;

(7) Division of Drug Control means the personnel of the Nebraska State Patrol who are assigned to enforce the Uniform Controlled Substances Act;

(8) Dispense means to deliver a controlled substance to an ultimate user or a research subject pursuant to a medical order issued by a practitioner authorized to prescribe, including the packaging, labeling, or compounding necessary to prepare the controlled substance for such delivery;

(9) Distribute means to deliver other than by administering or dispensing a controlled substance;

(10) Prescribe means to issue a medical order;

(11) Drug means (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them, (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals, and (c) substances intended for use as a component of any article specified in subdivision (a) or (b) of this subdivision, but does not include devices or their components, parts, or accessories;

(12) Deliver or delivery means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship;

(13) Marijuana means all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, but does not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, the sterilized seed of such plant which is incapable of germination, or cannabidiol contained in a drug

product approved by the federal Food and Drug Administration or obtained pursuant to sections 28-463 to 28-468. When the weight of marijuana is referred to in the Uniform Controlled Substances Act, it means its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time. When industrial hemp as defined in section 2-5701 is in the possession of a person as authorized under section 2-5701, it is not considered marijuana for purposes of the Uniform Controlled Substances Act;

(14) Manufacture means the production, preparation, propagation, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. Manufacture does not include the preparation or compounding of a controlled substance by an individual for his or her own use, except for the preparation or compounding of components or ingredients used for or intended to be used for the manufacture of methamphetamine, or the preparation, compounding, conversion, packaging, or labeling of a controlled substance: (a) By a practitioner as an incident to his or her prescribing, administering, or dispensing of a controlled substance in the course of his or her professional practice; or (b) by a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(15) Narcotic drug means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (a) Opium, opium poppy and poppy straw, coca leaves, and opiates; (b) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates; or (c) a substance and any compound, manufacture, salt, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivisions (a) and (b) of this subdivision, except that the words narcotic drug as used in the Uniform Controlled Substances Act does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium;

(16) Opiate means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. Opiate does not include the dextrorotatory isomer of 3-methoxy-n methylmorphinan and its salts. Opiate includes its racemic and levorotatory forms;

(17) Opium poppy means the plant of the species *Papaver somniferum* L., except the seeds thereof;

(18) Poppy straw means all parts, except the seeds, of the opium poppy after mowing;

(19) Person means any corporation, association, partnership, limited liability company, or one or more persons;

(20) Practitioner means a physician, a physician assistant, a dentist, a veterinarian, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, a nurse practitioner, a scientific investigator, a pharmacy, a hospital, or any other person licensed, regis-

tered, 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 includes the manufacture, planting, cultivation, or harvesting of a controlled substance;

(22) Immediate precursor means a substance which is the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture;

(23) State means the State of Nebraska;

(24) Ultimate user means a person who lawfully possesses a controlled substance for his or her own use, for the use of a member of his or her household, or for administration to an animal owned by him or her or by a member of his or her household;

(25) Hospital has the same meaning as in section 71-419;

(26) Cooperating individual means any person, other than a commissioned law enforcement officer, who acts on behalf of, at the request of, or as agent for a law enforcement agency for the purpose of gathering or obtaining evidence of offenses punishable under the Uniform Controlled Substances Act;

(27) Hashish or concentrated cannabis means (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. When resins extracted from industrial hemp as defined in section 2-5701 are in the possession of a person as authorized under section 2-5701, they are not considered hashish or concentrated cannabis for purposes of the Uniform Controlled Substances Act;

(28) Exceptionally hazardous drug means (a) a narcotic drug, (b) thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital, (e) secobarbital, (f) pentobarbital, (g) amphetamine, or (h) methamphetamine;

(29) Imitation controlled substance means a substance which is not a controlled substance or controlled substance analogue but which, by way of express or implied representations and consideration of other relevant factors including those specified in section 28-445, would lead a reasonable person to believe the substance is a controlled substance or controlled substance analogue. A placebo or registered investigational drug manufactured, distributed, possessed, or delivered in the ordinary course of practice or research by a health care professional shall not be deemed to be an imitation controlled substance;

(30)(a) Controlled substance analogue means a substance (i) the chemical structure of which is substantially similar to the chemical structure of a Schedule I or Schedule II controlled substance as provided in section 28-405 or (ii) which has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system of a Schedule I or Schedule II controlled substance as provided in section 28-405. A controlled substance analogue shall, to the extent intended for

human consumption, be treated as a controlled substance under Schedule I of section 28-405 for purposes of the Uniform Controlled Substances Act; and

(b) Controlled substance analogue does not include (i) a controlled substance, (ii) any substance generally recognized as safe and effective within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2014, (iii) any substance for which there is an approved new drug application, or (iv) with respect to a particular person, any substance if an exemption is in effect for investigational use for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on January 1, 2014, to the extent conduct with respect to such substance is pursuant to such exemption;

(31) Anabolic steroid means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids), that promotes muscle growth and includes any controlled substance in Schedule III(d) of section 28-405. Anabolic steroid does not include any anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and has been approved by the Secretary of Health and Human Services for such administration, but if any person prescribes, dispenses, or distributes such a steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision;

(32) Chart order means an order for a controlled substance issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order does not include a prescription;

(33) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(34) Prescription means an order for a controlled substance issued by a practitioner. Prescription does not include a chart order;

(35) Registrant means any person who has a controlled substances registration issued by the state or the Drug Enforcement Administration of the United States Department of Justice;

(36) Reverse distributor means a person whose primary function is to act as an agent for a pharmacy, wholesaler, manufacturer, or other entity by receiving, inventorying, and managing the disposition of outdated, expired, or otherwise nonsaleable controlled substances;

(37) 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;

(38) 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;

(39) Electronic signature has the definition found in section 86-621;

(40) Electronic transmission means transmission of information in electronic form. Electronic transmission includes computer-to-computer transmission or computer-to-facsimile transmission;

(41) Long-term care facility means an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

(42) Compounding has the same meaning as in section 38-2811;

(43) Cannabinoid receptor agonist shall mean any chemical compound or substance that, according to scientific or medical research, study, testing, or analysis, demonstrates the presence of binding activity at one or more of the CB1 or CB2 cell membrane receptors located within the human body; and

(44) Lookalike substance means a product or substance, not specifically designated as a controlled substance in section 28-405, that is either portrayed in such a manner by a person to lead another person to reasonably believe that it produces effects on the human body that replicate, mimic, or are intended to simulate the effects produced by a controlled substance or that possesses one or more of the following indicia or characteristics:

(a) The packaging or labeling of the product or substance suggests that the user will achieve euphoria, hallucination, mood enhancement, stimulation, or another effect on the human body that replicates or mimics those produced by a controlled substance;

(b) The name or packaging of the product or substance uses images or labels suggesting that it is a controlled substance or produces effects on the human body that replicate or mimic those produced by a controlled substance;

(c) The product or substance is marketed or advertised for a particular use or purpose and the cost of the product or substance is disproportionately higher than other products or substances marketed or advertised for the same or similar use or purpose;

(d) The packaging or label on the product or substance contains words or markings that state or suggest that the product or substance is in compliance with state and federal laws regulating controlled substances;

(e) The owner or person in control of the product or substance uses evasive tactics or actions to avoid detection or inspection of the product or substance by law enforcement authorities;

(f) The owner or person in control of the product or substance makes a verbal or written statement suggesting or implying that the product or substance is a synthetic drug or that consumption of the product or substance will replicate or mimic effects on the human body to those effects commonly produced through use or consumption of a controlled substance;

(g) The owner or person in control of the product or substance makes a verbal or written statement to a prospective customer, buyer, or recipient of the product or substance implying that the product or substance may be resold for profit; or

(h) The product or substance contains a chemical or chemical compound that does not have a legitimate relationship to the use or purpose claimed by the seller, distributor, packer, or manufacturer of the product or substance or indicated by the product name, appearing on the product's packaging or label or depicted in advertisement of the product or substance.

**Source:** Laws 1977, LB 38, § 61; Laws 1978, LB 276, § 1; Laws 1980, LB 696, § 1; Laws 1985, LB 323, § 1; Laws 1985, LB 406, § 2; Laws 1988, LB 273, § 3; Laws 1988, LB 537, § 1; Laws 1992, LB 1019,

§ 30; Laws 1993, LB 121, § 175; Laws 1996, LB 1044, § 68; Laws 1996, LB 1108, § 1; Laws 1997, LB 307, § 3; Laws 1999, LB 379, § 1; Laws 2001, LB 398, § 1; Laws 2002, LB 1105, § 428; Laws 2003, LB 200, § 1; Laws 2005, LB 117, § 1; Laws 2005, LB 256, § 16; Laws 2005, LB 382, § 1; Laws 2007, LB247, § 1; Laws 2007, LB296, § 35; Laws 2007, LB463, § 1119; Laws 2009, LB195, § 1; Laws 2013, LB23, § 4; Laws 2014, LB811, § 2; Laws 2014, LB1001, § 2; Laws 2015, LB390, § 2; Laws 2016, LB1009, § 2; Laws 2017, LB487, § 3.  
Effective date August 24, 2017.

**Cross References**

**Health Care Facility Licensure Act**, see section 71-401.

**28-401.01 Act, how cited.**

Sections 28-401 to 28-456.01 and 28-458 to 28-472 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; Laws 2011, LB20, § 2; Laws 2014, LB811, § 3; Laws 2015, LB390, § 3; Laws 2016, LB1009, § 3; Laws 2017, LB487, § 4.  
Effective date August 24, 2017.

**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) Difenoxyin;
- (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) Levophenacylmorphane;
- (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-piperidyl)-N-phenylacetamide, its optical isomers, salts, and salts of isomers;
- (50) Alpha-methylthiofentanyl, N-(1-methyl-2-(2-thienyl)ethyl-4-piperidyl)-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;

(57) Para-fluorofentanyl, N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidinyl)propanamide, its optical isomers, salts, and salts of isomers; and

(58) U-47700, 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide.

(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) Hydromorphanol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine; and

(23) Thebacon.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, and, for purposes of this subdivision only, isomer shall include the optical, position, and geometric isomers:

(1) Bufotenine. Trade and other names shall include, but are not limited to: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indole; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; and mappine;

(2) 4-bromo-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; and 4-bromo-2,5-DMA;

(3) 4-methoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methoxy-alpha-methylphenethylamine; and paramethoxyamphetamine, PMA;

(4) 4-methyl-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; DOM; and STP;

(5) Ibogaine. Trade and other names shall include, but are not limited to: 7-Ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; and Tabernanthe iboga;

(6) Lysergic acid diethylamide;

(7) Marijuana;

(8) Mescaline;

(9) 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;

(10) Psilocybin;

(11) Psilocyn;

(12) 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;

(13) N-ethyl-3-piperidyl benzilate;

(14) N-methyl-3-piperidyl benzilate;

(15) 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;

(16) Hashish or concentrated cannabis;

(17) 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;

(18) 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;

(19) Pyrrolidine analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy; and PHP;

(20) Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

(21) 2,5-dimethoxy-4-ethylamphet-amine; and DOET;

(22) 1-(1-(2-thienyl)cyclohexyl)pyrrolidine; and TCPy;

(23) Alpha-methyltryptamine, which is also known as AMT;

(24) *Salvia divinorum* or Salvinorin A. *Salvia divinorum* or Salvinorin A includes all parts of the plant presently classified botanically as *Salvia divinorum*, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, derivative, mixture, or preparation of such plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation;

(25) Any material, compound, mixture, or preparation containing any quantity of synthetically produced cannabinoids as listed in subdivisions (A) through (L) of this subdivision, including their salts, isomers, salts of isomers, and nitrogen, oxygen, or sulfur-heterocyclic analogs, unless specifically excepted elsewhere in this section. Since nomenclature of these synthetically produced cannabinoids is not internationally standardized and may continually evolve, these structures or compounds of these structures shall be included under this subdivision, regardless of their specific numerical designation of atomic positions covered, so long as it can be determined through a recognized method of scientific testing or analysis that the substance contains properties that fit within one or more of the following categories:

(A) Tetrahydrocannabinols: Meaning tetrahydrocannabinols naturally contained in a plant of the genus *cannabis* (*cannabis* plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *cannabis*, sp. and/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; Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers;

(B) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl,

2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(C) Naphthylmethylindoles: Any compound containing a 1 H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(D) Naphthoypyrroles: Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(E) Naphthylideneindenes: Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(F) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(G) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not substituted in or on any of the listed ring systems to any extent;

(H) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(I) Adamantoylindoles: Any compound containing a 3-adamantoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-me-

thyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(J) Tetramethylcyclopropanoylindoles: Any compound containing a 3-tetramethylcyclopropanoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(K) Indole carboxamides: Any compound containing a 1-indole-3-carboxamide structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, substitution at the carboxamide group by an alkyl, methoxy, benzyl, propionaldehyde, adamantyl, 1-naphthyl, phenyl, aminoalkyl group, or quinolinyl group, whether or not further substituted in or on any of the listed ring systems to any extent or to the adamantyl, 1-maphthyl, phenyl, aminoalkyl, benzyl, or propionaldehyde groups to any extent;

(L) Indole carboxylates: Any compound containing a 1-indole-3-carboxylate structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, substitution at the carboxylate group by an alkyl, methoxy, benzyl, propionaldehyde, adamantyl, 1-naphthyl, phenyl, aminoalkyl group, or quinolinyl group, whether or not further substituted in or on any of the listed ring systems to any extent or to the adamantyl, 1-maphthyl, phenyl, aminoalkyl, benzyl, or propionaldehyde groups to any extent; and

(M) Any nonnaturally occurring substance, chemical compound, mixture, or preparation, not specifically listed elsewhere in these schedules and which is not approved for human consumption by the federal Food and Drug Administration, containing or constituting a cannabinoid receptor agonist as defined in section 28-401;

(26) Any material, compound, mixture, or preparation containing any quantity of a substituted phenethylamine as listed in subdivisions (A) through (C) of this subdivision, unless specifically excepted, listed in another schedule, or specifically named in this schedule, that is structurally derived from phenylethan-2-amine by substitution on the phenyl ring with a fused methylenedioxy ring, fused furan ring, or a fused tetrahydrofuran ring; by substitution with two alkoxy groups; by substitution with one alkoxy and either one fused furan, tetrahydrofuran, or tetrahydropyran ring system; or by substitution with two fused ring systems from any combination of the furan, tetrahydrofuran, or tetrahydropyran ring systems, whether or not the compound is further modified in any of the following ways:

(A) Substitution of the phenyl ring by any halo, hydroxyl, alkyl, trifluoromethyl, alkoxy, or alkylthio groups; (B) substitution at the 2-position by any alkyl groups; or (C) substitution at the 2-amino nitrogen atom with alkyl, dialkyl,

benzyl, hydroxybenzyl or methoxybenzyl groups, and including, but not limited to:

- (i) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-C or 2,5-Dimethoxy-4-chlorophenethylamine;
- (ii) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine, which is also known as 2C-D or 2,5-Dimethoxy-4-methylphenethylamine;
- (iii) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine, which is also known as 2C-E or 2,5-Dimethoxy-4-ethylphenethylamine;
- (iv) 2-(2,5-Dimethoxyphenyl)ethanamine, which is also known as 2C-H or 2,5-Dimethoxyphenethylamine;
- (v) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-I or 2,5-Dimethoxy-4-iodophenethylamine;
- (vi) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine, which is also known as 2C-N or 2,5-Dimethoxy-4-nitrophenethylamine;
- (vii) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine, which is also known as 2C-P or 2,5-Dimethoxy-4-propylphenethylamine;
- (viii) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine, which is also known as 2C-T-2 or 2,5-Dimethoxy-4-ethylthiophenethylamine;
- (ix) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine, which is also known as 2C-T-4 or 2,5-Dimethoxy-4-isopropylthiophenethylamine;
- (x) 2-(4-bromo-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-B or 2,5-Dimethoxy-4-bromophenethylamine;
- (xi) 2-(2,5-dimethoxy-4-(methylthio)phenyl)ethanamine, which is also known as 2C-T or 4-methylthio-2,5-dimethoxyphenethylamine;
- (xii) 1-(2,5-dimethoxy-4-iodophenyl)-propan-2-amine, which is also known as DOI or 2,5-Dimethoxy-4-iodoamphetamine;
- (xiii) 1-(4-Bromo-2,5-dimethoxyphenyl)-2-aminopropane, which is also known as DOB or 2,5-Dimethoxy-4-bromoamphetamine;
- (xiv) 1-(4-chloro-2,5-dimethoxy-phenyl)propan-2-amine, which is also known as DOC or 2,5-Dimethoxy-4-chloroamphetamine;
- (xv) 2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-B-NBOMe; 25B-NBOMe or 2,5-Dimethoxy-4-bromo-N-(2-methoxybenzyl)phenethylamine;
- (xvi) 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-I-NBOMe; 25I-NBOMe or 2,5-Dimethoxy-4-iodo-N-(2-methoxybenzyl)phenethylamine;
- (xvii) N-(2-Methoxybenzyl)-2-(3,4,5-trimethoxyphenyl)ethanamine, which is also known as Mescaline-NBOMe or 3,4,5-trimethoxy-N-(2-methoxybenzyl)phenethylamine;
- (xviii) 2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-C-NBOMe; or 25C-NBOMe or 2,5-Dimethoxy-4-chloro-N-(2-methoxybenzyl)phenethylamine;
- (xix) 2-(7-Bromo-5-methoxy-2,3-dihydro-1-benzofuran-4-yl)ethanamine, which is also known as 2CB-5-hemiFLY;
- (xx) 2-(8-bromo-2,3,6,7-tetrahydrofuro [2,3-f][1]benzofuran-4-yl)ethanamine, which is also known as 2C-B-FLY;

(xxi) 2-(10-Bromo-2,3,4,7,8,9-hexahydropyrano[2,3-g]chromen-5-yl)ethanamine, which is also known as 2C-B-butterFLY;

(xxii) N-(2-Methoxybenzyl)-1-(8-bromo-2,3,6,7-tetrahydrobenzo[1,2-b:4,5-b']difuran-4-yl)-2-aminoethane, which is also known as 2C-B-FLY-NBOMe;

(xxiii) 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine, which is also known as bromo-benzodifuranylisopropylamine or bromo-dragonFLY;

(xxiv) N-(2-Hydroxybenzyl)-4-iodo-2,5-dimethoxyphenethylamine, which is also known as 2C-INBOH or 25I-NBOH;

(xxv) 5-(2-Aminopropyl)benzofuran, which is also known as 5-APB;

(xxvi) 6-(2-Aminopropyl)benzofuran, which is also known as 6-APB;

(xxvii) 5-(2-Aminopropyl)-2,3-dihydrobenzofuran, which is also known as 5-APDB;

(xxviii) 6-(2-Aminopropyl)-2,3-dihydrobenzofuran, which is also known as 6-APDB;

(xxix) 2,5-dimethoxy-amphetamine, which is also known as 2, 5-dimethoxy-amethylphenethylamine; 2, 5-DMA;

(xxx) 2,5-dimethoxy-4-ethylamphetamine, which is also known as DOET;

(xxxi) 2,5-dimethoxy-4-(n)-propylthiophenethylamine, which is also known as 2C-T-7;

(xxxii) 5-methoxy-3,4-methylenedioxy-amphetamine;

(xxxiii) 4-methyl-2,5-dimethoxy-amphetamine, which is also known as 4-methyl-2,5-dimethoxy-amethylphenethylamine; DOM and STP;

(xxxiv) 3,4-methylenedioxy amphetamine, which is also known as MDA;

(xxxv) 3,4-methylenedioxymethamphetamine, which is also known as MDMA;

(xxxvi) 3,4-methylenedioxy-N-ethylamphetamine, which is also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, MDE, MDEA; and

(xxxvii) 3,4,5-trimethoxy amphetamine;

(27) Any material, compound, mixture, or preparation containing any quantity of a substituted tryptamine unless specifically excepted, listed in another schedule, or specifically named in this schedule, that is structurally derived from 2-(1H-indol-3-yl)ethanamine, which is also known as tryptamine, by mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups or by inclusion of the amino nitrogen atom in a cyclic structure whether or not the compound is further substituted at the alpha position with an alkyl group or whether or not further substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups, and including, but not limited to:

(A) 5-methoxy-N,N-diallyltryptamine, which is also known as 5-MeO-DALT;

(B) 4-acetoxy-N,N-dimethyltryptamine, which is also known as 4-AcO-DMT or OAcetylpsilocin;

(C) 4-hydroxy-N-methyl-N-ethyltryptamine, which is also known as 4-HO-MET;

(D) 4-hydroxy-N,N-diisopropyltryptamine, which is also known as 4-HO-DIPT;

(E) 5-methoxy-N-methyl-N-isopropyltryptamine, which is also known as 5-MeOMiPT;

(F) 5-Methoxy-N,N-Dimethyltryptamine, which is also known as 5-MeO-DMT;

(G) 5-methoxy-N,N-diisopropyltryptamine, which is also known as 5-MeO-DiPT;

(H) Diethyltryptamine, which is also known as N,N-Diethyltryptamine, DET; and

(I) Dimethyltryptamine, which is also known as DMT; and

(28)(A) Any substance containing any quantity of the following materials, compounds, mixtures, or structures:

(i) 3,4-methylenedioxy-methcathinone, or bk-MDMA, or methydone;

(ii) 3,4-methylenedioxy-pyrovalerone, or MDPV;

(iii) 4-methylmethcathinone, or 4-MMC, or mephedrone;

(iv) 4-methoxymethcathinone, or bk-PMMA, or PMMC, or methedrone;

(v) Fluoromethcathinone, or FMC;

(vi) Naphthylpyrovalerone, or naphyrone; or

(vii) Beta-keto-N-methylbenzodioxolylpropylamine or bk-MBDB or butylone; or

(B) Unless listed in another schedule, any substance which contains any quantity of any material, compound, mixture, or structure, other than bupropion, that is structurally derived by any means from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:

(i) Substitution in the ring system to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;

(ii) Substitution at the 3-position with an acyclic alkyl substituent; or

(iii) Substitution at the 2-amino nitrogen atom with alkyl or dialkyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure.

(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) Fenethylamine;



- (2) N-ethylamphetamine;
  - (3) Aminorex; aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;
  - (4) Cathinone; 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone; and norephedrone;
  - (5) Methcathinone, its salts, optical isomers, and salts of optical isomers. Some other names: 2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; methylcathinone; monomethylpropion; ephedrone; N-methylcathinone; AL-464; AL-422; AL-463; and UR1432;
  - (6) (+/-)cis-4-methylaminorex; and (+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine;
  - (7) N,N-dimethylamphetamine; N,N-alpha-trimethyl-benzeneethanamine; and N,N-alpha-trimethylphenethylamine; and
  - (8) Benzylpiperazine, 1-benzylpiperazine.
- (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:

- (A) Raw opium;
- (B) Opium extracts;
- (C) Opium fluid;
- (D) Powdered opium;
- (E) Granulated opium;
- (F) Tincture of opium;
- (G) Codeine;
- (H) Ethylmorphine;
- (I) Etorphine hydrochloride;
- (J) Hydrocodone;
- (K) Hydromorphone;
- (L) Metopon;
- (M) Morphine;
- (N) Oxycodone;
- (O) Oxymorphone;
- (P) Oripavine;
- (Q) Thebaine; and
- (R) 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-alpha-acetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;

(26) Carfentanil;

(27) Remifentanil; and

(28) Tapentadol.

(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;

(4) Methylphenidate; and

(5) Lisdexamfetamine, its salts, isomers, and salts of its isomers.

(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;

(2) Immediate precursors to phencyclidine, PCP:

(A) 1-phenylcyclohexylamine; or

(B) 1-piperidinocyclohexanecarbonitrile, PCC; or

(3) Immediate precursor to fentanyl; 4-anilino-N-phenethyl-4-piperidine (ANNPP).

#### 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) Embutramide;
- (4) Lysergic acid;
- (5) Lysergic acid amide;
- (6) Methyprylon;
- (7) Perampanel;
- (8) Sulfondiethylmethane;
- (9) Sulfonethylmethane;
- (10) Sulfonmethane;
- (11) Nalorphine;

(12) 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;

(13) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing only as a suppository;

(14) 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 January 1, 2014;

(15) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (+/-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone; and

(16) 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 flupyrzapon.

(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:

(A) 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;

(B) 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;

(C) 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;

(D) 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;

(E) 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

(F) 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:

(A) Buprenorphine.

(d) Unless contained on the list of exempt anabolic steroids of the Drug Enforcement Administration of the United States Department of Justice as the list existed on January 1, 2014, 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) 3-beta,17-dihydroxy-5a-androstane;
- (2) 3-alpha,17-beta-dihydroxy-5a-androstane;
- (3) 5-alpha-androstan-3,17-dione;
- (4) 1-androstenediol (3-beta,17-beta-dihydroxy-5-alpha-androst-1-ene);
- (5) 1-androstenediol (3-alpha,17-beta-dihydroxy-5-alpha-androst-1-ene);
- (6) 4-androstenediol (3-beta,17-beta-dihydroxy-androst-5-ene);
- (7) 5-androstenediol (3-beta,17-beta-dihydroxy-androst-5-ene);
- (8) 1-androstenedione ([5-alpha]-androst-1-en-3,17-dione);
- (9) 4-androstenedione (androst-4-en-3,17-dione);
- (10) 5-androstenedione (androst-5-en-3,17-dione);
- (11) Bolasterone (7-alpha,17-alpha-dimethyl-17-beta-hydroxyandrost-4-en-3-one);
- (12) Boldenone (17-beta-hydroxyandrost-1,4-diene-3-one);
- (13) Boldione (androsta-1,4-diene-3,17-3-one);
- (14) Calusterone (7-beta,17-alpha-dimethyl-17-beta-hydroxyandrost-4-en-3-one);
- (15) Clostebol (4-chloro-17-beta-hydroxyandrost-4-en-3-one);
- (16) Dehydrochloromethyltestosterone (4-chloro-17-beta-hydroxy-17-alpha-methyl-androst-1,4-dien-3-one);

- (17) Desoxymethyltestosterone (17-alpha-methyl-5-alpha-androst-2-en-17-beta-ol) (a.k.a. 'madol');
- (18) Delta-1-Dihydrotestosterone (a.k.a. '1-testosterone')(17-beta-hydroxy-5-alpha-androst-1-en-3-one);
- (19) 4-Dihydrotestosterone (17-beta-hydroxy-androstan-3-one);
- (20) Drostanolone (17-beta-hydroxy-2-alpha-methyl-5-alpha-androstan-3-one);
- (21) Ethylestrenol (17-alpha-ethyl-17-beta-hydroxyestr-4-ene);
- (22) Fluoxymesterone (9-fluoro-17-alpha-methyl-11-beta,17-beta-dihydroxyandrost-4-en-3-one);
- (23) Formebolone (formebolone); (2-formyl-17-alpha-methyl-11-alpha,17-beta-dihydroxyandrost-1,4-dien-3-one);
- (24) Furazabol (17-alpha-methyl-17-beta-hydroxyandrostano[2,3-c]-furan);
- (25) 13-beta-ethyl-17-beta-hydroxygon-4-en-3-one;
- (26) 4-hydroxytestosterone (4,17-beta-dihydroxy-androst-4-en-3-one);
- (27) 4-hydroxy-19-nortestosterone (4,17-beta-dihydroxy-estr-4-en-3-one);
- (28) Mestanolone (17-alpha-methyl-17-beta-hydroxy-5-androstan-3-one);
- (29) Mesterolone (17-alpha-methyl-17-beta-hydroxy-5-androstan-3-one);
- (30) Methandienone (17-alpha-methyl-17-beta-hydroxyandrost-1,4-dien-3-one);
- (31) Methandriol (17-alpha-methyl-3-beta,17-beta-dihydroxyandrost-5-ene);
- (32) Methasterone (2-alpha,17-alpha-dimethyl-5-alpha-androstan-17-beta-ol-3-one);
- (33) Methenolone (1-methyl-17-beta-hydroxy-5-alpha-androst-1-en-3-one);
- (34) 17-alpha-methyl-3-beta,17-beta-dihydroxy-5a-androstane;
- (35) 17-alpha-methyl-3-alpha,17-beta-dihydroxy-5a-androstane;
- (36) 17-alpha-methyl-3-beta,17-beta-dihydroxyandrost-4-ene;
- (37) 17-alpha-methyl-4-hydroxynandrolone (17-alpha-methyl-4-hydroxy-17-beta-hydroxyestr-4-en-3-one);
- (38) Methyldienolone (17-alpha-methyl-17-beta-hydroxyestra-4,9(10)-dien-3-one);
- (39) Methyltrienolone (17-alpha-methyl-17-beta-hydroxyestra-4,9,11-trien-3-one);
- (40) Methyltestosterone (17-alpha-methyl-17-beta-hydroxyandrost-4-en-3-one);
- (41) Mibolerone (7-alpha,17-alpha-dimethyl-17-beta-hydroxyestr-4-en-3-one);
- (42) 17-alpha-methyl-delta-1-dihydrotestosterone (17-beta-hydroxy-17-alpha-methyl-5-alpha-androst-1-en-3-one) (a.k.a. '17-alpha-methyl-1-testosterone');
- (43) Nandrolone (17-beta-hydroxyestr-4-en-3-one);
- (44) 19-nor-4-androstenediol (3-beta, 17-beta-dihydroxyestr-4-ene);
- (45) 19-nor-4-androstenediol (3-alpha, 17-beta-dihydroxyestr-4-ene);
- (46) 19-nor-5-androstenediol (3-beta, 17-beta-dihydroxyestr-5-ene);
- (47) 19-nor-5-androstenediol (3-alpha, 17-beta-dihydroxyestr-5-ene);
- (48) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);
- (49) 19-nor-4-androstenedione (estr-4-en-3,17-dione);

- (50) 19-nor-5-androstenedione (estr-5-en-3,17-dione);
- (51) Norbolethone (13-beta, 17-alpha-diethyl-17-beta-hydroxygon-4-en-3-one);
- (52) Norclostebol (4-chloro-17-beta-hydroxyestr-4-en-3-one);
- (53) Norethandrolone (17-alpha-ethyl-17-beta-hydroxyestr-4-en-3-one);
- (54) Normethandrolone (17-alpha-methyl-17-beta-hydroxyestr-4-en-3-one);
- (55) Oxandrolone (17-alpha-methyl-17-beta-hydroxy-2-oxa-[5-alpha]-androst-3-one);
- (56) Oxymesterone (17-alpha-methyl-4,17-beta-dihydroxyandrost-4-en-3-one);
- (57) Oxymetholone (17-alpha-methyl-2-hydroxymethylene-17-beta-hydroxy-[5-alpha]-androst-3-one);
- (58) Prostanazol (17-beta-hydroxy-5-alpha-androstano[3,2-c]pyrazole);
- (59) Stanozolol (17-alpha-methyl-17-beta-hydroxy-[5-alpha]-androst-2-eno[3,2-c]-pyrazole);
- (60) Stenbolone (17-beta-hydroxy-2-methyl-[5-alpha]-androst-1-en-3-one);
- (61) Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);
- (62) Testosterone (17-beta-hydroxyandrost-4-en-3-one);
- (63) Tetrahydrogestrinone (13-beta, 17-alpha-diethyl-17-beta-hydroxygon-4,9,11-trien-3-one);
- (64) Trenbolone (17-beta-hydroxyestr-4,9,11-trien-3-one); and
- (65) Any salt, ester, or ether of a drug or substance described or listed in this subdivision if the salt, ester, or ether promotes muscle growth.

(e) Hallucinogenic substances known as:

(1) Dronabinol, synthetic, in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration. Some other names for dronabinol are (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo (b,d)pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol.

#### Schedule IV

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Barbital;
- (2) Chloral betaine;
- (3) Chloral hydrate;
- (4) Chlordiazepoxide, but not including librax (chlordiazepoxide hydrochloride and clindinium bromide) or menrium (chlordiazepoxide and water soluble esterified estrogens);
- (5) Clonazepam;
- (6) Clorazepate;
- (7) Diazepam;
- (8) Ethchlorvynol;
- (9) Ethinamate;

- (10) Flurazepam;
- (11) Mebutamate;
- (12) Meprobamate;
- (13) Methohexital;
- (14) Methylphenobarbital;
- (15) Oxazepam;
- (16) Paraldehyde;
- (17) Petrichloral;
- (18) Phenobarbital;
- (19) Prazepam;
- (20) Alprazolam;
- (21) Bromazepam;
- (22) Camazepam;
- (23) Clobazam;
- (24) Clotiazepam;
- (25) Cloxazolam;
- (26) Delorazepam;
- (27) Estazolam;
- (28) Ethyl loflazepate;
- (29) Fludiazepam;
- (30) Flunitrazepam;
- (31) Halazepam;
- (32) Haloxazolam;
- (33) Ketazolam;
- (34) Loprazolam;
- (35) Lorazepam;
- (36) Lormetazepam;
- (37) Medazepam;
- (38) Nimetazepam;
- (39) Nitrazepam;
- (40) Nordiazepam;
- (41) Oxazolam;
- (42) Pinazepam;
- (43) Temazepam;
- (44) Tetrazepam;
- (45) Triazolam;
- (46) Midazolam;
- (47) Quazepam;
- (48) Zolpidem;
- (49) Dichloralphenazone;
- (50) Zaleplon;



- (51) Zopiclone;
- (52) Fospropofol;
- (53) Alfaxalone;
- (54) Suvorexant; and
- (55) Carisoprodol.

(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;
- (2) Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit; and
- (3) 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers, and salts of these isomers to include: Tramadol.

(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:

- (1) Pentazocine; and
- (2) Butorphanol (including its optical isomers).

(f) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Lorcaserin.

(g)(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, optical isomers, and salts of such optical isomers: Ephedrine.

(2) The following drug products containing ephedrine, its salts, optical isomers, and salts of such optical isomers, are excepted from subdivision (g)(1) of Schedule IV if they (A) are stored behind a counter, in an area not accessible to customers, or in a locked case so that a customer needs assistance from an employee to access the drug product; (B) are sold by a person, eighteen years of age or older, in the course of his or her employment to a customer eighteen years of age or older with the following restrictions: No customer shall be allowed to purchase, receive, or otherwise acquire more than three and six-tenths grams of ephedrine base during a twenty-four-hour period; no customer shall purchase, receive, or otherwise acquire more than nine grams of ephedrine base during a thirty-day period; and the customer shall display a valid driver's or operator's license, a Nebraska state identification card, a military identification card, an alien registration card, or a passport as proof of identification; (C) are labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph; (D) are manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse; and (E) are not marketed, advertised, or represented in any manner for the indication of stimulation, mental alertness, euphoria, ecstasy, a buzz or high, heightened sexual performance, or increased muscle mass:

- (i) Primatene Tablets; and
- (ii) Bronkaid Dual Action Caplets.

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.

(c) 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 depressant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Ezogabine (N-(2-amino-4-(4-fluorobenzylamino)-phenyl)-carbamic acid ethyl ester);

(2) Lacosamide ((R)-2-acetoamido-N-benzyl-3-methoxy-propionamide); and

(3) Pregabalin ((S)-3-(aminomethyl)-5-methylhexanoic acid).

(d) Cannabidiol in a drug product approved by the federal Food and Drug Administration.

**Source:** Laws 1977, LB 38, § 65; Laws 1978, LB 748, § 50; Laws 1980, LB 696, § 2; Laws 1985, LB 323, § 2; Laws 1985, LB 406, § 3; Laws 1986, LB 1160, § 1; Laws 1987, LB 473, § 1; Laws 1990, LB 571, § 6; Laws 1992, LB 1019, § 32; Laws 1994, LB 1210, § 3; Laws 1995, LB 406, § 5; Laws 1996, LB 1213, § 4; Laws 1998, LB 1073, § 8; Laws 1999, LB 594, § 1; Laws 2000, LB 1115, § 2; Laws 2001, LB 113, § 10; Laws 2002, LB 500, § 1; Laws 2003, LB 245, § 1; Laws 2005, LB 382, § 2; Laws 2007, LB247, § 2; Laws 2008, LB902, § 1; Laws 2009, LB123, § 1; Laws 2009, LB151, § 1; Laws 2010, LB792, § 1; Laws 2011, LB19, § 1; Laws 2012, LB670, § 1; Laws 2013, LB298, § 1; Laws 2014, LB811, § 4; Laws 2015, LB390, § 4; Laws 2017, LB487, § 5.

Effective date August 24, 2017.

**28-410 Records of registrants; inventory; violation; penalty; storage.**

(1) Each registrant manufacturing, distributing, or dispensing controlled substances in Schedule I, II, III, IV, or V of section 28-405 shall keep and maintain a complete and accurate record of all stocks of such controlled substances on hand. Such records shall be maintained for five years.

(2) Each registrant manufacturing, distributing, storing, or dispensing such controlled substances shall prepare an annual inventory of each controlled substance in his or her possession. Such inventory shall (a) be taken within one year after the previous annual inventory date, (b) contain such information as shall be required by the Board of Pharmacy, (c) be copied and such copy forwarded to the department within thirty days after completion, (d) be maintained at the location listed on the registration for a period of five years, (e) contain the name, address, and Drug Enforcement Administration number of the registrant, the date and time of day the inventory was completed, and the signature of the person responsible for taking the inventory, (f) list the exact count or measure of all controlled substances listed in Schedules I, II, III, IV, and V of section 28-405, and (g) be maintained in permanent, read-only format separating the inventory for controlled substances listed in Schedules I and II of section 28-405 from the inventory for controlled substances listed in Schedules III, IV, and V of section 28-405. A registrant whose inventory fails to comply with this subsection shall be guilty of a Class IV misdemeanor.

(3) This section shall not apply to practitioners who prescribe or administer, as a part of their practice, controlled substances listed in Schedule II, III, IV,

or V of section 28-405 unless such practitioner regularly engages in dispensing any such drug or drugs to his or her patients.

(4) Controlled substances shall be stored in accordance with the following:

(a) All controlled substances listed in Schedule I of section 28-405 must be stored in a locked cabinet; and

(b) All controlled substances listed in Schedule II, III, IV, or V of section 28-405 must be stored in a locked cabinet or distributed throughout the inventory of noncontrolled substances in a manner which will obstruct theft or diversion of the controlled substances or both.

(5) Each pharmacy which is registered with the administration and in which controlled substances are stored or dispensed shall complete a controlled-substances inventory when there is a change in the pharmacist-in-charge. The inventory shall contain the information required in the annual inventory, and the original copy shall be maintained in the pharmacy for five years after the date it is completed.

**Source:** Laws 1977, LB 38, § 70; Laws 1996, LB 1108, § 2; Laws 1997, LB 307, § 7; Laws 1997, LB 550, § 3; Laws 2001, LB 398, § 8; Laws 2003, LB 242, § 3; Laws 2008, LB902, § 2; Laws 2017, LB166, § 1.  
Effective date April 28, 2017.

**28-411 Controlled substances; records; by whom kept; contents; compound controlled substances; duties.**

(1) Every practitioner who is authorized to administer or professionally use controlled substances shall keep a record of such controlled substances received by him or her and a record of all such controlled substances administered or professionally used by him or her, other than by medical order issued by a practitioner authorized to prescribe, in accordance with subsection (4) of this section.

(2) Manufacturers, wholesalers, distributors, and reverse distributors shall keep records of all controlled substances compounded, mixed, cultivated, grown, or by any other process produced or prepared and of all controlled substances received and disposed of by them, in accordance with subsection (4) of this section.

(3) Pharmacies shall keep records of all controlled substances received and disposed of by them, in accordance with subsection (4) of this section.

(4)(a) The record of controlled substances received shall in every case show (i) the date of receipt, (ii) the name, address, and Drug Enforcement Administration number of the person receiving the controlled substances, (iii) the name, address, and Drug Enforcement Administration number of the person from whom received, (iv) the kind and quantity of controlled substances received, (v) the kind and quantity of controlled substances produced or removed from process of manufacture, and (vi) the date of such production or removal from process of manufacture.

(b) The record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced. The record of all controlled substances sold, administered, dispensed, or otherwise disposed of shall show the date of selling, administering, or dispensing, the name and address of the person to whom or

for whose use or the owner and species of animal for which the controlled substances were sold, administered, or dispensed, and the kind and quantity of controlled substances. For any lost, destroyed, or stolen controlled substances, the record shall list the kind and quantity of such controlled substances and the discovery date of such loss, destruction, or theft.

(c) Every such record shall be kept for a period of five years from the date of the transaction recorded.

(5) Any person authorized to compound controlled substances shall comply with section 38-2867.01.

**Source:** Laws 1977, LB 38, § 71; Laws 1988, LB 273, § 4; Laws 1995, LB 406, § 6; Laws 1996, LB 1044, § 69; Laws 2001, LB 398, § 9; Laws 2015, LB37, § 28; Laws 2017, LB166, § 2.  
Effective date April 28, 2017.

**28-414 Controlled substance; Schedule II; prescription; contents.**

(1) Except as otherwise provided in this section 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 a prescription from a practitioner authorized to prescribe. No prescription for a controlled substance listed in Schedule II of section 28-405 shall be filled more than six months from the date of issuance. A prescription for a controlled substance listed in Schedule II of section 28-405 shall not be refilled.

(2) A prescription for controlled substances listed in Schedule II of section 28-405 must contain the following information prior to being filled by a pharmacist or dispensing practitioner: (a) Patient's name and address, (b) name of the drug, device, or biological, (c) strength of the drug or biological, if applicable, (d) dosage form of the drug or biological, (e) quantity of the drug, device, or biological prescribed, (f) directions for use, (g) date of issuance, (h) prescribing practitioner's name and address, and (i) Drug Enforcement Administration number of the prescribing practitioner. If the prescription is a written paper prescription, the paper prescription must contain the prescribing practitioner's manual signature. If the prescription is an electronic prescription, the electronic prescription must contain all of the elements in subdivisions (a) through (i) of this subsection, must be digitally signed, and must be transmitted to and received by the pharmacy electronically to meet all of the requirements of the Controlled Substances Act, 21 U.S.C. 801 et seq., as it existed on January 1, 2014, pertaining to electronic prescribing of controlled substances.

(3)(a) In emergency situations, a controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to an oral prescription reduced to writing in accordance with subsection (2) of this section, except for the prescribing practitioner's signature, and bearing the word "emergency".

(b) For purposes of this section, emergency situation means a situation in which a prescribing practitioner determines that (i) immediate administration of the controlled substance is necessary for proper treatment of the patient, (ii) no appropriate alternative treatment is available, including administration of a drug which is not a controlled substance listed in Schedule II of section 28-405, and (iii) it is not reasonably possible for the prescribing practitioner to provide a signed, written or electronic prescription to be presented to the person dispensing the controlled substance prior to dispensing.

(4)(a) 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 paper prescription if the original written, signed paper prescription is presented to the pharmacist for review before the controlled substance is dispensed, except as provided in subdivision (a)(ii) or (iii) of this subsection;

(ii) A narcotic drug listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription (A) to be compounded for direct parenteral administration to a patient for the purpose of home infusion therapy or (B) for administration to a patient enrolled in a hospice care program and bearing the words “hospice patient”; and

(iii) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription for administration to a resident of a long-term care facility.

(b) For purposes of subdivisions (a)(ii) and (iii) of this subsection, a facsimile of a written, signed paper prescription shall serve as the original written prescription and shall be maintained in accordance with subsection (1) of section 28-414.03.

(5)(a) 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 or in the electronic record. The remaining portion of the prescription may be filled no later than thirty days after the date on which the prescription is written. 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 paper prescription or electronic prescription.

(b) 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 or in the electronic record. 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.

**Source:** Laws 1977, LB 38, § 74; Laws 1988, LB 273, § 5; Laws 1995, LB 406, § 7; Laws 1996, LB 1108, § 4; Laws 1997, LB 307, § 8; Laws 1999, LB 594, § 4; Laws 2000, LB 819, § 65; Laws 2001, LB 398, § 12; Laws 2004, LB 1005, § 2; Laws 2005, LB 382, § 3;

Laws 2007, LB463, § 1122; Laws 2009, LB195, § 3; Laws 2011, LB179, § 1; Laws 2014, LB811, § 6; Laws 2017, LB166, § 3.  
Effective date April 28, 2017.

**28-414.01 Controlled substance; Schedule III, IV, or V; prescription; contents.**

(1) Except as otherwise provided in this section 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, oral, or electronic medical order. Such medical order is valid for 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.

(2) A prescription for controlled substances listed in Schedule III, IV, or V of section 28-405 must contain the following information prior to being filled by a pharmacist or dispensing practitioner: (a) Patient's name and address, (b) name of the drug, device, or biological, (c) strength of the drug or biological, if applicable, (d) dosage form of the drug or biological, (e) quantity of the drug, device, or biological prescribed, (f) directions for use, (g) date of issuance, (h) number of refills, including pro re nata or PRN refills, not to exceed five refills within six months after the date of issuance, (i) prescribing practitioner's name and address, and (j) Drug Enforcement Administration number of the prescribing practitioner. If the prescription is a written paper prescription, the paper prescription must contain the prescribing practitioner's manual signature. If the prescription is an electronic prescription, the electronic prescription must contain all of the elements in subdivisions (a) through (j) of this subsection, must be digitally signed, and must be transmitted to and received by the pharmacy electronically to meet all of the requirements of 21 C.F.R. 1311, as the regulation existed on January 1, 2014, pertaining to electronic prescribing of controlled substances.

(3) 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 paper prescription. The facsimile of a written, signed paper prescription shall serve as the original written prescription for purposes of this subsection and shall be maintained in accordance with subsection (2) of section 28-414.03.

(4) A prescription for a controlled substance listed in Schedule III, IV, or V of section 28-405 may be partially filled if (a) each partial filling is recorded in the same manner as a refilling, (b) the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed, and (c) each partial filling is dispensed within six months after the prescription was issued.

**Source:** Laws 2014, LB811, § 7; Laws 2017, LB166, § 4.  
Effective date April 28, 2017.

**28-414.03 Controlled substances; maintenance of records; label.**

(1) Paper 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.

(2) Prescriptions for all controlled substances listed in Schedule III, IV, or V of section 28-405 shall be maintained either separately from other prescriptions or in a form in which the information required is readily retrievable from ordinary business records of the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such records readily available to the department, the administration, and law enforcement for inspection without a search warrant.

(3) 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 serial number of the prescription under which it is recorded in the practitioner's prescription records, the name of the prescribing practitioner, and the directions for use of the controlled substance. Unless the prescribing practitioner writes "do not label" or words of similar import on the original paper prescription or so designates in an electronic prescription or an oral prescription, such label shall also bear the name of the controlled substance.

(4) For multidrug containers, more than one drug, device, or biological may be dispensed in the same container when (a) such container is prepackaged by the manufacturer, packager, or distributor and shipped directly to the pharmacy in this manner or (b) the container does not accommodate greater than a thirty-one-day supply of compatible dosage units and is labeled to identify each drug or biological in the container in addition to all other information required by law.

(5) If a pharmacy fills prescriptions for controlled substances on behalf of another pharmacy under contractual agreement or common ownership, the prescription label shall contain the Drug Enforcement Administration number of the pharmacy at which the prescriptions are filled.

**Source:** Laws 2014, LB811, § 9; Laws 2017, LB166, § 5.

Effective date April 28, 2017.

#### **28-416 Prohibited acts; violations; penalties.**

(1) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person knowingly or intentionally: (a) To manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance; or (b) to create, distribute, or possess with intent to distribute a counterfeit controlled substance.

(2) Except as provided in subsections (4), (5), (7), (8), (9), and (10) of this section, any person who violates subsection (1) of this section with respect to: (a) A controlled substance classified in Schedule I, II, or III of section 28-405 which is an exceptionally hazardous drug shall be guilty of a Class II felony; (b) any other controlled substance classified in Schedule I, II, or III of section 28-405 shall be guilty of a Class IIA felony; or (c) a controlled substance classified in Schedule IV or V of section 28-405 shall be guilty of a Class IIIA felony.

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana or any substance containing a quantifiable amount of the substances, chemicals, or compounds described, defined, or delineated in subdivision (c)(25) of Schedule I of section 28-405, unless such substance was



obtained directly or pursuant to a medical order issued by a practitioner authorized to prescribe while acting in the course of his or her professional practice, or except as otherwise authorized by the act, shall be guilty of a Class IV felony. A person shall not be in violation of this subsection if section 28-472 applies.

(4)(a) Except as authorized by the Uniform Controlled Substances Act, any person eighteen years of age or older who knowingly or intentionally manufactures, distributes, delivers, dispenses, or possesses with intent to manufacture, distribute, deliver, or dispense a controlled substance or a counterfeit controlled substance (i) to a person under the age of eighteen years, (ii) in, on, or within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school, a community college, a public or private college, junior college, or university, or a playground, or (iii) within one hundred feet of a public or private youth center, public swimming pool, or video arcade facility shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(b) For purposes of this subsection:

(i) Playground means any outdoor facility, including any parking lot appurtenant to the facility, intended for recreation, open to the public, and with any portion containing three or more apparatus intended for the recreation of children, including sliding boards, swingsets, and teeterboards;

(ii) Video arcade facility means any facility legally accessible to persons under eighteen years of age, intended primarily for the use of pinball and video machines for amusement, and containing a minimum of ten pinball or video machines; and

(iii) Youth center means any recreational facility or gymnasium, including any parking lot appurtenant to the facility or gymnasium, intended primarily for use by persons under eighteen years of age which regularly provides athletic, civic, or cultural activities.

(5)(a) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to manufacture, transport, distribute, carry, deliver, dispense, prepare for delivery, offer for delivery, or possess with intent to do the same a controlled substance or a counterfeit controlled substance.

(b) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to aid and abet any person in the manufacture, transportation, distribution, carrying, delivery, dispensing, preparation for delivery, offering for delivery, or possession with intent to do the same of a controlled substance or a counterfeit controlled substance.

(c) Any person who violates subdivision (a) or (b) of this subsection shall be punished by the next higher penalty classification than the penalty prescribed

in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(6) It shall not be a defense to prosecution for violation of subsection (4) or (5) of this section that the defendant did not know the age of the person through whom the defendant violated such subsection.

(7) Any person who violates subsection (1) of this section with respect to cocaine or any mixture or substance containing a detectable amount of cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(8) Any person who violates subsection (1) of this section with respect to base cocaine (crack) or any mixture or substance containing a detectable amount of base cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(9) Any person who violates subsection (1) of this section with respect to heroin or any mixture or substance containing a detectable amount of heroin in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(10) Any person who violates subsection (1) of this section with respect to amphetamine, its salts, optical isomers, and salts of its isomers, or with respect to methamphetamine, its salts, optical isomers, and salts of its isomers, in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(11) Any person knowingly or intentionally possessing marijuana weighing more than one ounce but not more than one pound shall be guilty of a Class III misdemeanor.

(12) Any person knowingly or intentionally possessing marijuana weighing more than one pound shall be guilty of a Class IV felony.

(13) Any person knowingly or intentionally possessing marijuana weighing one ounce or less or any substance containing a quantifiable amount of the substances, chemicals, or compounds described, defined, or delineated in subdivision (c)(25) of Schedule I of section 28-405 shall:

(a) For the first offense, be guilty of an infraction, receive a citation, be fined three hundred dollars, and be assigned to attend a course as prescribed in section 29-433 if the judge determines that attending such course is in the best interest of the individual defendant;

(b) For the second offense, be guilty of a Class IV misdemeanor, receive a citation, and be fined four hundred dollars and may be imprisoned not to exceed five days; and

(c) For the third and all subsequent offenses, be guilty of a Class IIIA misdemeanor, receive a citation, be fined five hundred dollars, and be imprisoned not to exceed seven days.

(14) Any person convicted of violating this section, if placed on probation, shall, as a condition of probation, satisfactorily attend and complete appropriate treatment and counseling on drug abuse provided by a program authorized under the Nebraska Behavioral Health Services Act or other licensed drug treatment facility.

(15) Any person convicted of violating this section, if sentenced to the Department of Correctional Services, shall attend appropriate treatment and counseling on drug abuse.

(16) Any person knowingly or intentionally possessing a firearm while in violation of subsection (1) of this section shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(17) A person knowingly or intentionally in possession of money used or intended to be used to facilitate a violation of subsection (1) of this section shall be guilty of a Class IV felony.

(18) In addition to the existing penalties available for a violation of subsection (1) of this section, including any criminal attempt or conspiracy to violate subsection (1) of this section, a sentencing court may order that any money, securities, negotiable instruments, firearms, conveyances, or electronic communication devices as defined in section 28-833 or any equipment, components, peripherals, software, hardware, or accessories related to electronic communication devices be forfeited as a part of the sentence imposed if it finds by clear and convincing evidence adduced at a separate hearing in the same prosecution, following conviction for a violation of subsection (1) of this section, and conducted pursuant to section 28-1601, that any or all such property was derived from, used, or intended to be used to facilitate a violation of subsection (1) of this section.

(19) In addition to the penalties provided in this section:

(a) If the person convicted or adjudicated of violating this section is eighteen years of age or younger and has one or more licenses or permits issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for thirty days and (B) require such person to attend a drug education class;

(ii) For a second offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for ninety days and (B) require such person to complete no fewer than twenty and no more than forty hours of community service and to attend a drug education class; and

(iii) For a third or subsequent offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for twelve months and (B) require such person to complete no fewer than sixty hours of community service, to attend a drug education class, and to submit to a drug assessment by a licensed alcohol and drug counselor; and

(b) If the person convicted or adjudicated of violating this section is eighteen years of age or younger and does not have a permit or license issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until thirty days after the date of such order and (B) require such person to attend a drug education class;

(ii) For a second offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until ninety days after the date of such order and (B) require such person to complete no fewer than twenty hours and no more than forty hours of community service and to attend a drug education class; and

(iii) For a third or subsequent offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until twelve months after the date of such order and (B) require such person to complete no fewer than sixty hours of community service, to attend a drug education class, and to submit to a drug assessment by a licensed alcohol and drug counselor.

A copy of an abstract of the court's conviction or adjudication shall be transmitted to the Director of Motor Vehicles pursuant to sections 60-497.01 to 60-497.04 if a license or permit is impounded or a juvenile is prohibited from obtaining a license or permit under this subsection.

**Source:** Laws 1977, LB 38, § 76; Laws 1978, LB 808, § 2; Laws 1980, LB 696, § 3; Laws 1985, LB 406, § 4; Laws 1986, LB 504, § 1; Laws 1989, LB 592, § 2; Laws 1991, LB 742, § 1; Laws 1993, LB 117, § 2; Laws 1995, LB 371, § 6; Laws 1997, LB 364, § 8; Laws 1999, LB 299, § 1; Laws 2001, LB 398, § 14; Laws 2003, LB 46, § 1; Laws 2004, LB 1083, § 86; Laws 2005, LB 117, § 3; Laws 2008, LB844, § 1; Laws 2010, LB800, § 4; Laws 2011, LB19, § 2; Laws 2011, LB463, § 1; Laws 2013, LB298, § 2; Laws 2015, LB605, § 26; Laws 2016, LB1106, § 5; Laws 2017, LB487, § 6. Effective date August 24, 2017.

Cross References

**Motor Vehicle Operator's License Act**, see section 60-462.

**Nebraska Behavioral Health Services Act**, see section 71-801.

**28-441 Drug paraphernalia; use or possession; unlawful; penalty.**

(1) It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to manufacture, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of sections 28-101, 28-431, and 28-439 to 28-444.

(2) Any person who violates this section shall be guilty of an infraction.

(3) A person shall not be in violation of this section if section 28-472 applies.

**Source:** Laws 1980, LB 991, § 3; Laws 2017, LB487, § 7.  
Effective date August 24, 2017.

**28-442 Drug paraphernalia; deliver or manufacture; unlawful; exception; penalty.**

(1) It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances in which one reasonably should know, that it will be used to manufacture, inject, ingest, or inhale or otherwise be used to introduce into the human body a controlled substance in violation of sections 28-101, 28-431, and 28-439 to 28-444.

(2) This section shall not apply to pharmacists, pharmacist interns, pharmacy technicians, and pharmacy clerks who sell hypodermic syringes or needles for the prevention of the spread of infectious diseases.

(3) Any person who violates this section shall be guilty of a Class II misdemeanor.

**Source:** Laws 1980, LB 991, § 4; Laws 2001, LB 398, § 18; Laws 2017, LB166, § 6.  
Effective date April 28, 2017.

**28-470 Naloxone; authorized activities; immunity from administrative action, criminal prosecution, or civil liability.**

(1) A health professional who is authorized to prescribe or dispense naloxone, if acting with reasonable care, may prescribe, administer, or dispense naloxone to any of the following persons without being subject to administrative action or criminal prosecution:

(a) A person who is apparently experiencing or who is likely to experience an opioid-related overdose; or

(b) A family member, friend, or other person in a position to assist a person who is apparently experiencing or who is likely to experience an opioid-related overdose.

(2) A family member, friend, or other person who is in a position to assist a person who is apparently experiencing or who is likely to experience an opioid-related overdose, other than an emergency responder or peace officer, is not subject to actions under the Uniform Credentialing Act, administrative action, or criminal prosecution if the person, acting in good faith, obtains naloxone from a health professional or a prescription for naloxone from a health professional and administers the naloxone obtained from the health professional or acquired pursuant to the prescription to a person who is apparently experiencing an opioid-related overdose.

(3) An emergency responder who, acting in good faith, obtains naloxone from the emergency responder's emergency medical service organization and admin-

isters the naloxone to a person who is apparently experiencing an opioid-related overdose shall not be:

(a) Subject to administrative action or criminal prosecution; or

(b) Personally 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 such care or services or arising out of his or her failure to act to provide or arrange for further medical treatment or care for the person who is apparently experiencing an opioid-related overdose, unless the emergency responder caused damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission. This subdivision shall not affect the liability of such emergency medical service organization for the emergency responder's acts of commission or omission.

(4) A peace officer who, acting in good faith, obtains naloxone from the peace officer's law enforcement agency and administers the naloxone to a person who is apparently experiencing an opioid-related overdose shall not be:

(a) Subject to administrative action or criminal prosecution; or

(b) Personally 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 such care or services or arising out of his or her failure to act to provide or arrange for further medical treatment or care for the person who is apparently experiencing an opioid-related overdose, unless the peace officer caused damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission. This subdivision shall not affect the liability of such law enforcement agency for the peace officer's acts of commission or omission.

(5) For purposes of this section:

(a) Administer has the same meaning as in section 38-2806;

(b) Dispense has the same meaning as in section 38-2817;

(c) Emergency responder means an emergency medical responder, an emergency medical technician, an advanced emergency medical technician, or a paramedic licensed under the Emergency Medical Services Practice Act;

(d) Health professional means a physician, physician assistant, nurse practitioner, or pharmacist licensed under the Uniform Credentialing Act;

(e) Law enforcement agency means a police department, a town marshal, the office of sheriff, or the Nebraska State Patrol;

(f) Naloxone means naloxone hydrochloride; and

(g) Peace officer has the same meaning as in section 49-801.

**Source:** Laws 2015, LB390, § 11; Laws 2017, LB487, § 9.  
Effective date August 24, 2017.

#### Cross References

Emergency Medical Services Practice Act, see section 38-1201.

Uniform Credentialing Act, see section 38-101.

#### **28-472 Drug overdose; exception from criminal liability; conditions.**

(1) A person shall not be in violation of section 28-441 or subsection (3) of section 28-416 if:

(a) Such person made a good faith request for emergency medical assistance in response to a drug overdose of himself, herself, or another;

(b) Such person made a request for medical assistance as soon as the drug overdose was apparent;

(c) The evidence for the violation of section 28-441 or subsection (3) of section 28-416 was obtained as a result of the drug overdose and the request for medical assistance; and

(d) When emergency medical assistance was requested for the drug overdose of another person:

(i) Such requesting person remained on the scene until medical assistance or law enforcement personnel arrived; and

(ii) Such requesting person cooperated with medical assistance and law enforcement personnel.

(2) The exception from criminal liability provided in subsection (1) of this section applies to any person who makes a request for emergency medical assistance and complies with the requirements of subsection (1) of this section.

(3) A person shall not be in violation of section 28-441 or subsection (3) of section 28-416 if such person was experiencing a drug overdose and the evidence for such violation was obtained as a result of the drug overdose and a request for medical assistance by another person made in compliance with subsection (1) of this section.

(4) A person shall not initiate or maintain an action against a peace officer or the state agency or political subdivision employing such officer based on the officer's compliance with subsections (1) through (3) of this section.

(5) Nothing in this section shall be interpreted to interfere with or prohibit the investigation, arrest, or prosecution of any person for, or affect the admissibility or use of evidence in, cases involving:

(a) Drug-induced homicide;

(b) Except as provided in subsections (1) through (3) of this section, violations of section 28-441 or subsection (3) of section 28-416; or

(c) Any other criminal offense.

(6) As used in this section, drug overdose means an acute condition including, but not limited to, physical illness, coma, mania, hysteria, or death resulting from the consumption or use of a controlled substance or the consumption or use of another substance with which a controlled substance was combined and which condition a layperson would reasonably believe requires emergency medical assistance.

**Source:** Laws 2017, LB487, § 8.

Effective date August 24, 2017.

## ARTICLE 6

### OFFENSES INVOLVING FRAUD

Section

28-612. False statement or book entry; destruction or secretion of records; penalty.

**28-612 False statement or book entry; destruction or secretion of records; penalty.**

(1) A person commits a Class IV felony if he or she:

(a) Willfully and knowingly subscribes to, makes, or causes to be made any false statement or entry in the books of an organization; or

(b) Knowingly subscribes to or exhibits false papers with the intent to deceive any person or persons authorized to examine into the affairs of any such organization; or

(c) Makes, states, or publishes any false statement of the amount of the assets or liabilities of any such organization; or

(d) Fails to make true and correct entry in the books and records of such organization of its business and transactions in the manner and form prescribed by the Department of Banking and Finance; or

(e) Mutilates, alters, destroys, secretes, or removes any of the books or records of such organization, without the consent of the Director of Banking and Finance.

(2) As used in this section, organization means:

(a) Any trust company transacting a business under the Nebraska Trust Company Act;

(b) Any association organized for the purpose set forth in section 8-302;

(c) Any bank as defined in section 8-101.03; or

(d) Any credit union transacting business in this state under the Credit Union Act.

**Source:** Laws 1977, LB 38, § 134; Laws 1983, LB 440, § 1; Laws 1984, LB 979, § 1; Laws 1995, LB 384, § 16; Laws 1996, LB 948, § 122; Laws 1998, LB 1321, § 77; Laws 2002, LB 1094, § 13; Laws 2003, LB 131, § 24; Laws 2017, LB140, § 150.  
Operative date August 24, 2017.

Cross References

Credit Union Act, see section 21-1701.  
Nebraska Trust Company Act, see section 8-201.01.

ARTICLE 7

OFFENSES INVOLVING THE FAMILY RELATION

- Section  
28-712. Alternative response implementation plan; contents; department; use; report; rules and regulations.  
28-712.01. Alternative response demonstration projects; Review, Evaluate, and Decide Team; duties; department; duties; Inspector General’s review.  
28-718. Child protection cases; central registry; name-change order; treatment; fee; waiver.

**28-712 Alternative response implementation plan; contents; department; use; report; rules and regulations.**

(1) The department, in consultation with the Nebraska Children’s Commission, shall develop an alternative response implementation plan in accordance with this section and sections 28-710.01 and 28-712.01. The alternative response implementation plan shall include the provision of concrete supports and voluntary services, including, but not limited to: Meeting basic needs, including food and clothing assistance; housing assistance; transportation assistance; child care assistance; and mental health and substance abuse services. When the alternative response implementation plan has been developed, the department may begin using alternative response in up to five alternative



response demonstration project locations that are designated by the department. The department may begin using alternative response statewide on and after April 28, 2017. The department shall provide a report to the commission and the Health and Human Services Committee of the Legislature by November 15, 2018. The report shall outline, at a minimum, the challenges, barriers, and opportunities that may occur if the alternative response implementation plan is made permanent. The department shall continue using alternative response until December 31, 2020. Continued use of alternative response thereafter shall require approval of the Legislature. For purposes of this section, demonstration project location means any geographic region, including, but not limited to, a city, a township, a village, a county, a group of counties, or a group of counties and cities, townships, or villages.

(2) The department shall provide to the Nebraska Children's Commission regular updates on:

- (a) The status of alternative response;
- (b) Inclusion of child welfare stakeholders, service providers, and other community partners, including families, for feedback and recommendations on alternative response;
- (c) Any findings or recommendations made by the independent evaluator, including costs; and
- (d) Any alternative response programmatic modifications, including, but not limited to, proposed changes in rules and regulations.

(3) The department shall adopt and promulgate rules and regulations to carry out this section and sections 28-710.01 and 28-712.01. Such rules and regulations shall include, but not be limited to, provisions on the transfer of cases from alternative response to traditional response; notice to families subject to a comprehensive assessment and served through alternative response of the alternative response process and their rights, including the opportunity to challenge agency determinations; the provision of services through alternative response; the collection, sharing, and reporting of data; and the alternative response ineligibility criteria.

**Source:** Laws 2014, LB853, § 3; Laws 2017, LB225, § 1.  
Operative date April 28, 2017.

**28-712.01 Alternative response demonstration projects; Review, Evaluate, and Decide Team; duties; department; duties; Inspector General's review.**

(1) This section applies to alternative response demonstration projects designated under section 28-712.

(2) The Review, Evaluate, and Decide Team shall convene to review intakes pursuant to the department's rules, regulations, and policies, to evaluate the information, and to determine assignment for alternative response or traditional response. The team shall utilize consistent criteria to review the severity of the allegation of child abuse or neglect, access to the perpetrator, vulnerability of the child, family history including previous reports, parental cooperation, parental or caretaker protective factors, and other information as deemed necessary. At the conclusion of the review, the intake shall be assigned to either traditional response or alternative response. Decisions of the team shall be made by consensus. If the team cannot come to consensus, the intake shall be assigned for a traditional response.

(3) In the case of an alternative response, the department shall complete a comprehensive assessment. The department shall transfer the case being given alternative response to traditional response if the department determines that a child is unsafe. Upon completion of the comprehensive assessment, if it is determined that the child is safe, participation in services offered to the family receiving an alternative response is voluntary, the case shall not be transferred to traditional response based upon the family's failure to enroll or participate in such services, and the subject of the report shall not be entered into the central registry of child protection cases maintained pursuant to section 28-718.

(4) The department shall, by the next working day after receipt of a report of child abuse and neglect, enter into the tracking system of child protection cases maintained pursuant to section 28-715 all reports of child abuse or neglect received under this section that are opened for alternative response and any action taken.

(5) The department shall make available to the appropriate investigating law enforcement agency, child advocacy center, and county attorney a copy of all reports relative to a case of suspected child abuse or neglect. Aggregate, nonidentifying reports of child abuse or neglect receiving an alternative response shall be made available quarterly to requesting agencies outside the department. Such alternative response data shall include, but not be limited to, the nature of the initial child abuse or neglect report, the age of the child or children, the nature of services offered, the location of the cases, the number of cases per month, and the number of alternative response cases that were transferred to traditional response. No other agency or individual except the office of Inspector General of Nebraska Child Welfare, the Public Counsel, law enforcement agency personnel, child advocacy center employees, and county attorneys shall be provided specific, identifying reports of child abuse or neglect being given alternative response. The office of Inspector General of Nebraska Child Welfare shall have access to all reports relative to cases of suspected child abuse or neglect subject to traditional response and those subject to alternative response. The department and the office shall develop procedures allowing for the Inspector General's review of cases subject to alternative response. The Inspector General shall include in the report pursuant to section 43-4331 a summary of all cases reviewed pursuant to this subsection.

**Source:** Laws 2014, LB853, § 4; Laws 2017, LB225, § 2.  
Operative date April 28, 2017.

**28-718 Child protection cases; central registry; name-change order; treatment; fee; waiver.**

(1) There shall be a central registry of child protection cases maintained in the department containing records of all reports of child abuse or neglect opened for investigation as provided in section 28-713 and classified as either court substantiated or agency substantiated as provided in section 28-720.

(2) The department shall determine whether a name-change order received from the clerk of a district court pursuant to section 25-21,271 is for a person on the central registry of child protection cases and, if so, shall include the changed name with the former name in the registry and file or cross-reference the information under both names.

(3) The department may charge a reasonable fee in an amount established by the department in rules and regulations to recover expenses in carrying out

central registry records checks. The fee shall not exceed three dollars for each request to check the records of the central registry. The department shall remit the fees to the State Treasurer for credit to the Health and Human Services Cash Fund. The department may waive the fee if the requesting party shows the fee would be an undue financial hardship. The department shall use the fees to defray costs incurred to carry out such records checks. The department may adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 1979, LB 505, § 6; Laws 2005, LB 116, § 9; Laws 2009, LB122, § 1; Laws 2010, LB147, § 3; Laws 2014, LB853, § 7; Laws 2017, LB225, § 3.

Operative date September 3, 2017.

## ARTICLE 8

### OFFENSES RELATING TO MORALS

#### Section

28-802. Pandering; penalty.

28-830. Human trafficking; forced labor or services; terms, defined.

28-831. Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties.

#### **28-802 Pandering; penalty.**

(1) A person commits pandering if such person:

- (a) Entices another person to become a prostitute;
- (b) Procures or harbors therein an inmate for a house of prostitution or for any place where prostitution is practiced or allowed;
- (c) Inveigles, entices, persuades, encourages, or procures any person to come into or leave this state for the purpose of prostitution or debauchery; or
- (d) Receives or gives or agrees to receive or give any money or other thing of value for procuring or attempting to procure any person to become a prostitute or commit an act of prostitution or come into this state or leave this state for the purpose of prostitution or debauchery.

(2) Pandering is a Class II felony.

**Source:** Laws 1977, LB 38, § 158; Laws 2012, LB1145, § 1; Laws 2013, LB255, § 4; Laws 2015, LB294, § 10; Laws 2017, LB289, § 7.  
Effective date August 24, 2017.

#### Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

#### **28-830 Human trafficking; forced labor or services; terms, defined.**

For purposes of sections 28-830 and 28-831, the following definitions apply:

- (1) Actor means a person who solicits, procures, or supervises the services or labor of another person;
- (2) Commercial sexual activity means any sex act on account of which anything of value is given, promised to, or received by any person;
- (3) Debt bondage means inducing another person to provide:
  - (a) Commercial sexual activity in payment toward or satisfaction of a real or purported debt; or

(b) Labor or services in payment toward or satisfaction of a real or purported debt if:

(i) The reasonable value of the labor or services is not applied toward the liquidation of the debt; or

(ii) The length of the labor or services is not limited and the nature of the labor or services is not defined;

(4) Financial harm means theft by extortion as described by section 28-513;

(5) Forced labor or services means labor or services that are performed or provided by another person and are obtained or maintained through:

(a) Inflicting or threatening to inflict serious personal injury, as defined by section 28-318, on another person;

(b) Physically restraining or threatening to physically restrain the other person;

(c) Abusing or threatening to abuse the legal process against another person to cause arrest or deportation for violation of federal immigration law;

(d) Controlling or threatening to control another person's access to a controlled substance listed in Schedule I, II or III of section 28-405;

(e) Exploiting another person's substantial functional impairment as defined in section 28-368 or substantial mental impairment as defined in section 28-369;

(f) Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document or any other actual or purported government identification document of the other person; or

(g) Causing or threatening to cause financial harm to another person, including debt bondage;

(6) Labor or services means work or activity of economic or financial value;

(7) Labor trafficking means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or attempting to recruit, entice, harbor, transport, provide, or obtain by any means a person eighteen years of age or older intending or knowing that the person will be subjected to forced labor or services;

(8) Labor trafficking of a minor means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or attempting to recruit, entice, harbor, transport, provide, or obtain by any means a minor intending or knowing that the minor will be subjected to forced labor or services;

(9) Maintain means, in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement by the other person to perform such type of service;

(10) Minor means a person younger than eighteen years of age;

(11) Sex trafficking means knowingly recruiting, enticing, harboring, transporting, providing, soliciting, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, solicit, or obtain by any means a person eighteen years of age or older for the purpose of having such person engage without consent, as defined in section 28-318, in commercial sexual activity, sexually explicit performance, or the production of pornography or to cause or attempt to cause a person eighteen years of age or older to engage

without consent, as defined in section 28-318, in commercial sexual activity, sexually explicit performance, or the production of pornography;

(12) Sex trafficking of a minor means knowingly recruiting, enticing, harboring, transporting, providing, soliciting, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, solicit, or obtain by any means a minor for the purpose of having such minor engage in commercial sexual activity, sexually explicit performance, or the production of pornography or to cause or attempt to cause a minor to engage in commercial sexual activity, sexually explicit performance, or the production of pornography;

(13) Sexually-explicit performance means a live or public play, dance, show, or other exhibition intended to arouse or gratify sexual desire or to appeal to prurient interests; and

(14) Trafficking victim means a person subjected to any act or acts prohibited by section 28-831.

**Source:** Laws 2006, LB 1086, § 10; Laws 2013, LB1, § 1; Laws 2013, LB255, § 6; Laws 2014, LB998, § 4; Laws 2017, LB289, § 8. Effective date August 24, 2017.

**28-831 Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties.**

(1) Any person who engages in labor trafficking of a minor or sex trafficking of a minor is guilty of a Class IB felony.

(2) Any person who engages in labor trafficking or sex trafficking is guilty of a Class II felony.

(3) Any person, other than a trafficking victim, who knowingly benefits from or participates in a venture which has, as part of the venture, an act that is in violation of this section is guilty of a Class IIA felony.

(4) It is not a defense in a prosecution under this section (a) that consent was given by the minor victim, (b) that the defendant believed that the minor victim gave consent, or (c) that the defendant believed that the minor victim was an adult.

**Source:** Laws 2006, LB 1086, § 11; Laws 2013, LB255, § 7; Laws 2014, LB998, § 5; Laws 2015, LB294, § 12; Laws 2017, LB289, § 9. Effective date August 24, 2017.

**ARTICLE 9**

**OFFENSES INVOLVING INTEGRITY AND EFFECTIVENESS OF GOVERNMENT OPERATION**

Section

28-915. Perjury; subornation of perjury; penalty.

28-915.01. False statement under oath or affirmation; penalty; applicability of section.

**28-915 Perjury; subornation of perjury; penalty.**

(1) A person is guilty of perjury if, in any (a) official proceeding he or she makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he or she does not believe it to be true or (b) official proceeding in the State of Nebraska he or she makes a false statement in any unsworn

declaration meeting the requirements of the Uniform Unsworn Foreign Declarations Act under penalty of perjury when the statement is material and he or she does not believe it to be true. Perjury is a Class III felony.

(2) A person is guilty of subornation of perjury if he or she persuades, procures, or suborns any other person to commit perjury. Subornation of perjury is a Class III felony.

(3) A falsification shall be material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It shall not be a defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation shall be a question of law.

(4) It shall not be a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed. A document purporting to meet the requirements of the Uniform Unsworn Foreign Declarations Act shall be deemed to have been made under penalty of perjury.

(5) No person shall be guilty of an offense under this section if he or she retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(6) When the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(7) No person shall be convicted of an offense under this section when proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

**Source:** Laws 1977, LB 38, § 200; Laws 1987, LB 451, § 3; Laws 2017, LB57, § 1.  
Effective date August 24, 2017.

**Cross References**

Uniform Unsworn Foreign Declarations Act, see section 49-1801.

**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, or makes a false statement in an unsworn declaration that meets the requirements of the Uniform Unsworn Foreign Declarations Act, 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, or makes a false statement in an unsworn declaration that meets the requirements of the Uniform Unsworn Foreign Declarations Act, 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 Nebraska Political Accountability and Disclosure Act.

**Source:** Laws 1987, LB 451, § 4; Laws 2007, LB464, § 1; Laws 2013, LB79, § 1; Laws 2017, LB57, § 2.  
Effective date August 24, 2017.

**Cross References**

Nebraska Political Accountability and Disclosure Act, see section 49-1401.  
Uniform Unsworn Foreign Declarations Act, see section 49-1801.

**ARTICLE 12**

**OFFENSES AGAINST PUBLIC HEALTH AND SAFETY**

Section

28-1201. Terms, defined.

28-1206. Possession of a deadly weapon by a prohibited person; penalty.

**28-1201 Terms, defined.**

For purposes of sections 28-1201 to 28-1212.04, unless the context otherwise requires:

(1) Firearm means any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or frame or receiver of any such weapon;

(2) Fugitive from justice means any person who has fled or is fleeing from any peace officer to avoid prosecution or incarceration for a felony;

(3) Handgun means any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand;

(4) Juvenile means any person under the age of eighteen years;

(5) Knife means:

(a) Any dagger, dirk, knife, or stiletto with a blade over three and one-half inches in length and which, in the manner it is used or intended to be used, is capable of producing death or serious bodily injury; or

(b) Any other dangerous instrument which is capable of inflicting cutting, stabbing, or tearing wounds and which, in the manner it is used or intended to be used, is capable of producing death or serious bodily injury;

(6) Knuckles and brass or iron knuckles means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made,

or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles;

(7) Machine gun means any firearm, whatever its size and usual designation, that shoots automatically more than one shot, without manual reloading, by a single function of the trigger;

(8) School means a public, private, denominational, or parochial elementary, vocational, or secondary school, a private postsecondary career school as defined in section 85-1603, a community college, a public or private college, a junior college, or a university;

(9) Short rifle means a rifle having a barrel less than sixteen inches long or an overall length of less than twenty-six inches; and

(10) Short shotgun means a shotgun having a barrel or barrels less than eighteen inches long or an overall length of less than twenty-six inches.

**Source:** Laws 1977, LB 38, § 233; Laws 1994, LB 988, § 2; Laws 2009, LB63, § 9; Laws 2009, LB430, § 6; Laws 2017, LB558, § 1.  
Effective date August 24, 2017.

**28-1206 Possession of a deadly weapon by a prohibited person; penalty.**

(1) A person commits the offense of possession of a deadly weapon by a prohibited person if he or she:

(a) Possesses a firearm, a knife, or brass or iron knuckles and he or she:

(i) Has previously been convicted of a felony;

(ii) Is a fugitive from justice;

(iii) Is the subject of a current and validly issued domestic violence protection order, harassment protection order, or sexual assault protection order and is knowingly violating such order; or

(b) Possesses a firearm or brass or iron knuckles and he or she has been convicted within the past seven years of a misdemeanor crime of domestic violence.

(2) The felony conviction may have been had in any court in the United States, the several states, territories, or possessions, or the District of Columbia.

(3)(a) Possession of a deadly weapon which is not a firearm by a prohibited person is a Class III felony.

(b) Possession of a deadly weapon which is a firearm by a prohibited person is a Class ID felony for a first offense and a Class IB felony for a second or subsequent offense.

(4) Subdivision (1)(a)(i) of this section shall not prohibit:

(a) Possession of archery equipment for lawful purposes; or

(b) If in possession of a recreational license, possession of a knife for purposes of butchering, dressing, or otherwise processing or harvesting game, fish, or furs.

(5)(a) For purposes of this section, misdemeanor crime of domestic violence means a crime that:

(i) Is classified as a misdemeanor under the laws of the United States or the District of Columbia or the laws of any state, territory, possession, or tribe;



(ii) Has, as an element, the use or attempted use of physical force or the threatened use of a deadly weapon; and

(iii) Is committed by another against his or her spouse, his or her former spouse, a person with whom he or she has a child in common whether or not they have been married or lived together at any time, or a person with whom he or she is or was involved in a dating relationship as defined in section 28-323.

(b) For purposes of this section, misdemeanor crime of domestic violence also includes the following offenses, if committed by a person against his or her spouse, his or her former spouse, a person with whom he or she is or was involved in a dating relationship as defined in section 28-323, or a person with whom he or she has a child in common whether or not they have been married or lived together at any time:

(i) Assault in the third degree under section 28-310;

(ii) Stalking under subsection (1) of section 28-311.04;

(iii) False imprisonment in the second degree under section 28-315;

(iv) First offense domestic assault in the third degree under subsection (1) of section 28-323; or

(v) Any attempt or conspiracy to commit any of such offenses.

(c) A person shall not be considered to have been convicted of a misdemeanor crime of domestic violence unless:

(i) The person was represented by counsel in the case or knowingly and intelligently waived the right to counsel in the case; and

(ii) In the case of a prosecution for a misdemeanor crime of domestic violence for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either:

(A) The case was tried to a jury; or

(B) The person knowingly and intelligently waived the right to have the case tried to a jury.

(6) In addition, for purposes of this section:

(a) Archery equipment means:

(i) A longbow, recurve bow, compound bow, or nonelectric crossbow that is drawn or cocked with human power and released by human power; and

(ii) Target or hunting arrows, including arrows with broad, fixed, or removable heads or that contain multiple sharp cutting edges;

(b) Domestic violence protection order means a protection order issued pursuant to section 42-924;

(c) Harassment protection order means a protection order issued pursuant to section 28-311.09 or that meets or exceeds the criteria set forth in section 28-311.10 regarding protection orders issued by a court in any other state or a territory, possession, or tribe;

(d) Recreational license means a state-issued license, certificate, registration, permit, tag, sticker, or other similar document or identifier evidencing permission to hunt, fish, or trap for furs in the State of Nebraska; and

(e) Sexual assault protection order means a protection order issued pursuant to section 28-311.11 or that meets or exceeds the criteria set forth in section

28-311.12 regarding protection orders issued by a court in any other state or a territory, possession, or tribe.

**Source:** Laws 1977, LB 38, § 238; Laws 1978, LB 748, § 19; Laws 1995, LB 371, § 9; Laws 2009, LB63, § 15; Laws 2010, LB771, § 10; Laws 2017, LB289, § 10; Laws 2017, LB478, § 1.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB289, section 10, with LB478, section 1, to reflect all amendments.

**Note:** Changes made by LB478 became effective May 10, 2017. Changes made by LB289 became effective August 24, 2017.

**ARTICLE 13**

**MISCELLANEOUS OFFENSES**

(s) PUBLIC PROTECTION ACT

Section  
28-1356. Violation; penalty.

(s) PUBLIC PROTECTION ACT

**28-1356 Violation; penalty.**

(1) A person who violates section 28-1355 shall be guilty of a Class III felony; however, such person shall be guilty of a Class IB felony if the violation is based upon racketeering activity which is punishable as a Class I, IA, or IB felony.

(2) In lieu of the fine authorized by section 28-105, any person convicted of engaging in conduct in violation of section 28-1355, through which pecuniary value was derived, or by which personal injury or property damage or other loss was caused, may be sentenced to pay a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred. Any fine collected under this subsection shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 2009, LB155, § 6; Laws 2015, LB268, § 10; Referendum 2016, No. 426.

**Note:** The changes made to section 28-1356 by Laws 2015, LB 268, section 10, have been omitted because of the vote on the referendum at the November 2016 general election.

## CHAPTER 29

### CRIMINAL PROCEDURE

Article.

- 4. Warrant and Arrest of Accused. 29-404.02, 29-422.
- 9. Bail. 29-901, 29-901.01.
- 16. Prosecution on Information. 29-1602, 29-1603.
- 18. Motions and Issues on Indictment. 29-1816 to 29-1823.
- 19. Preparation for Trial.
  - (a) Testimony in General. 29-1901, 29-1903.
- 20. Trial. 29-2004 to 29-2027.
- 22. Judgment on Conviction.
  - (a) Judgment on Conviction. 29-2204 to 29-2208.
  - (c) Probation. 29-2261.
  - (d) Community Service. 29-2277 to 29-2279.
- 24. Execution of Sentences. 29-2404 to 29-2412.
- 25. Special Procedure in Cases of Homicide. 29-2501 to 29-2546.
- 28. Habeas Corpus. 29-2801, 29-2811.
- 32. Rendition of Prisoners as Witnesses. 29-3205.
- 39. Public Defenders and Appointed Counsel.
  - (c) County Revenue Assistance Act. 29-3920 to 29-3930.
- 41. DNA Testing.
  - (a) DNA Identification Information Act. 29-4115.01.

#### ARTICLE 4

#### WARRANT AND ARREST OF ACCUSED

Section

- 29-404.02. Arrest without warrant; when.
- 29-422. Citation in lieu of arrest; legislative intent.

#### **29-404.02 Arrest without warrant; when.**

(1) Except as provided in sections 28-311.11 and 42-928, a peace officer may arrest a person without a warrant if the officer has reasonable cause to believe that such person has committed:

- (a) A felony;
- (b) A misdemeanor, and the officer has reasonable cause to believe that such person either (i) will not be apprehended unless immediately arrested, (ii) may cause injury to himself or herself or others or damage to property unless immediately arrested, (iii) may destroy or conceal evidence of the commission of such misdemeanor, or (iv) has committed a misdemeanor in the presence of the officer; or
- (c) One or more of the following acts to one or more household members, whether or not committed in the presence of the peace officer:
  - (i) Attempting to cause or intentionally and knowingly causing bodily injury with or without a dangerous instrument;
  - (ii) Placing, by physical menace, another in fear of imminent bodily injury; or
  - (iii) Engaging in sexual contact or sexual penetration without consent as defined in section 28-318.

(2) For purposes of this section:

(a) Household members includes spouses or former spouses, children, persons who are presently residing together or who have resided together in the past, persons who have a child in common whether or not they have been married or have lived together at any time, other persons related by consanguinity or affinity, and persons who are presently involved in a dating relationship with each other or who have been involved in a dating relationship with each other; and

(b) Dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement, but does not include a casual relationship or an ordinary association between persons in a business or social context.

**Source:** Laws 1967, c. 172, § 2, p. 487; Laws 1989, LB 330, § 1; Laws 2004, LB 613, § 6; Laws 2017, LB289, § 11.  
Effective date August 24, 2017.

**29-422 Citation in lieu of arrest; legislative intent.**

It is hereby declared to be the policy of the State of Nebraska to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law and the protection of the public. In furtherance of that policy, except as provided in sections 28-311.11, 42-928, and 42-929, any peace officer shall be authorized to issue a citation in lieu of arrest or continued custody for any offense which is a traffic infraction, any other infraction, or a misdemeanor and for any violation of a city or village ordinance. Such authorization shall be carried out in the manner specified in sections 29-422 to 29-429 and 60-684 to 60-686.

**Source:** Laws 1974, LB 829, § 1; Laws 1978, LB 808, § 6; Laws 1985, LB 19, § 2; Laws 1989, LB 330, § 2; Laws 1993, LB 370, § 12; Laws 2017, LB289, § 12.  
Effective date August 24, 2017.

**ARTICLE 9**

**BAIL**

Section

29-901. Bail; personal recognizance; conditions; pretrial release program; conditions.

29-901.01. Conditions of release; how determined.

**29-901 Bail; personal recognizance; conditions; pretrial release program; conditions.**

(1) Any bailable defendant shall be ordered released from custody pending judgment on his or her personal recognizance unless the judge determines in the exercise of his or her discretion that such a release will not reasonably assure the appearance of the defendant as required or that such a release could jeopardize the safety and maintenance of evidence or the safety of victims, witnesses, or other persons in the community. The court shall consider all methods of bond and conditions of release to avoid pretrial incarceration. If the judge determines that the defendant shall not be released on his or her personal recognizance, the judge shall consider the defendant’s financial ability to pay a

bond and shall impose the least onerous of the following conditions that will reasonably assure the defendant's appearance or that will eliminate or minimize the risk of harm to others or the public at large:

(a) Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

(b) Place restrictions on the travel, association, or place of abode of the defendant during the period of such release; or

(c) Require, at the option of any bailable defendant, either of the following:

(i) The execution of an appearance bond in a specified amount and the deposit with the clerk of the court in cash of a sum not to exceed ten percent of the amount of the bond, ninety percent of such deposit to be returned to the defendant upon the performance of the appearance or appearances and ten percent to be retained by the clerk as appearance bond costs, except that when no charge is subsequently filed against the defendant or if the charge or charges which are filed are dropped before the appearance of the defendant which the bond was to assure, the entire deposit shall be returned to the defendant. If the bond is subsequently reduced by the court after the original bond has been posted, no additional appearance bond costs shall be retained by the clerk. The difference in the appearance bond costs between the original bond and the reduced bond shall be returned to the defendant. In no event shall the deposit be less than twenty-five dollars. Whenever jurisdiction is transferred from a court requiring an appearance bond under this subdivision to another state court, the transferring court shall transfer the ninety percent of the deposit remaining after the appearance bond costs have been retained. No further costs shall be levied or collected by the court acquiring jurisdiction; or

(ii) The execution of a bail bond with such surety or sureties as shall seem proper to the judge or, in lieu of such surety or sureties, at the option of such person, a cash deposit of such sum so fixed, conditioned for his or her appearance before the proper court, to answer the offense with which he or she may be charged and to appear at such times thereafter as may be ordered by the proper court. The cash deposit shall be returned to the defendant upon the performance of all appearances.

(2) If the amount of bail is deemed insufficient by the court before which the offense is pending, the court may order an increase of such bail and the defendant shall provide the additional undertaking, written or cash, to secure his or her release. All recognizances in criminal cases shall be in writing and be continuous from term to term until final judgment of the court in such cases and shall also extend, when the court has suspended execution of sentence for a limited time, as provided in section 29-2202, or, when the court has suspended execution of sentence to enable the defendant to apply for a writ of error to the Supreme Court or Court of Appeals, as provided in section 29-2301, until the period of suspension has expired. When two or more indictments or informations are returned against the same person at the same term of court, the recognizance given may be made to include all offenses charged therein. Each surety on such recognizance shall be required to justify under oath in a sum twice the amount of such recognizance and give the description of real estate owned by him or her of a value above encumbrance equal to the amount of such justification and shall name all other cases pending in which he or she is a surety. No one shall be accepted as surety on recognizance aggregating a sum in excess of his or her equity in the real estate, but such recognizance shall not

constitute a lien on the real estate described therein until judgment is entered thereon against such surety.

(3) In order to assure compliance with the conditions of release referred to in subsection (1) of this section, the court may order a defendant to be supervised by a person, an organization, or a pretrial services program approved by the county board. A court shall waive any fees or costs associated with the conditions of release or supervision if the court finds the defendant is unable to pay for such costs. Eligibility for release or supervision by such pretrial release program shall under no circumstances be conditioned upon the defendant's ability to pay. While under supervision of an approved entity, and in addition to the conditions of release referred to in subsection (1) of this section, the court may impose the following conditions:

- (a) Periodic telephone contact by the defendant with the organization or pretrial services program;
- (b) Periodic office visits by the defendant to the organization or pretrial services program;
- (c) Periodic visits to the defendant's home by the organization or pretrial services program;
- (d) Mental health or substance abuse treatment for the defendant, including residential treatment, if the defendant consents or agrees to the treatment;
- (e) Periodic alcohol or drug testing of the defendant;
- (f) Domestic violence counseling for the defendant, if the defendant consents or agrees to the counseling;
- (g) Electronic or global-positioning monitoring of the defendant; and
- (h) Any other supervision techniques shown by research to increase court appearance and public safety rates for defendants released on bond.

(4) The incriminating results of any drug or alcohol test or any information learned by a representative of an organization or program shall not be admissible in any proceeding, except for a proceeding relating to revocation or amendment of conditions of bond release.

**Source:** G.S.1873, c. 58, §§ 346 to 348, p. 802; R.S.1913, § 9003; Laws 1921, c. 203, § 1, p. 733; C.S.1922, § 10027; C.S.1929, § 29-901; R.S.1943, § 29-901; Laws 1951, c. 87, § 1, p. 250; Laws 1953, c. 90, § 1, p. 261; Laws 1961, c. 132, § 1, p. 384; Laws 1972, LB 1032, § 174; Laws 1974, LB 828, § 1; Laws 1975, LB 284, § 2; Laws 1984, LB 773, § 1; Laws 1991, LB 732, § 74; Laws 1999, LB 51, § 1; Laws 2009, LB63, § 23; Laws 2010, LB771, § 15; Laws 2017, LB259, § 2.

Operative date August 24, 2017.

#### Cross References

**Appeals**, suspension of sentence, see section 29-2301.

**Forfeiture of recognizance**, see sections 29-1105 to 29-1110.

**Suspension of sentence**, see section 29-2202.

### 29-901.01 Conditions of release; how determined.

In determining which condition or conditions of release shall reasonably assure appearance and deter possible threats to the safety and maintenance of evidence or the safety of victims, witnesses, or other persons in the community, the judge shall, on the basis of available information, consider the defendant's

financial ability to pay in setting the amount of bond. The judge may also take into account the nature and circumstances of the offense charged, including any information to indicate that the defendant might engage in additional criminal activity or pose a threat to himself or herself, yet to be collected evidence, alleged victims, potential witnesses, or members of the general public, the defendant's family ties, employment, the length of the defendant's residence in the community, the defendant's record of criminal convictions, and the defendant's record of appearances at court proceedings or of flight to avoid prosecution or of failure to appear at court proceedings.

**Source:** Laws 1974, LB 828, § 2; Laws 2009, LB63, § 24; Laws 2010, LB771, § 16; Laws 2017, LB259, § 3.  
Operative date August 24, 2017.

## ARTICLE 16

### PROSECUTION ON INFORMATION

#### Section

- 29-1602. Information; by whom filed and subscribed; names of witnesses; endorsement.  
29-1603. Allegations; how made; joinder of offenses; rights of defendant.

#### **29-1602 Information; by whom filed and subscribed; names of witnesses; endorsement.**

All informations shall be filed in the court having jurisdiction of the offense specified therein, by the prosecuting attorney of the proper county as informant. The prosecuting attorney shall subscribe his or her name thereto and endorse thereon the names of the witnesses known to him or her at the time of filing. After the information has been filed, the prosecuting attorney shall endorse on the information the names of such other witnesses as shall then be known to him or her as the court in its discretion may prescribe, except that if a notice of aggravation is contained in the information as provided in section 29-1603, the prosecuting attorney may endorse additional witnesses at any time up to and including the thirtieth day prior to the trial of guilt.

**Source:** Laws 1885, c. 108, § 2, p. 397; R.S.1913, § 9063; Laws 1915, c. 164, § 1, p. 335; C.S.1922, § 10087; C.S.1929, § 29-1602; R.S. 1943, § 29-1602; Laws 2002, Third Spec. Sess., LB 1, § 4; Laws 2015, LB268, § 11; Referendum 2016, No. 426.

**Note:** The changes made to section 29-1602 by Laws 2015, LB 268, section 11, have been omitted because of the vote on the referendum at the November 2016 general election.

#### **29-1603 Allegations; how made; joinder of offenses; rights of defendant.**

(1) All informations shall be in writing and signed by the county attorney, complainant, or some other person, and the offenses charged therein shall be stated with the same fullness and precision in matters of substance as is required in indictments in like cases.

(2)(a) Any information charging a violation of section 28-303 and in which the death penalty is sought shall contain a notice of aggravation which alleges one or more aggravating circumstances, as such aggravating circumstances are provided in section 29-2523. The notice of aggravation shall be filed as provided in section 29-1602. It shall constitute sufficient notice to describe the alleged aggravating circumstances in the language provided in section 29-2523.

(b) The state shall be permitted to add to or amend a notice of aggravation at any time up to and including the thirtieth day prior to the trial of guilt.

(c) The existence or contents of a notice of aggravation shall not be disclosed to the jury until after the verdict is rendered in the trial of guilt.

(3) Different offenses and different degrees of the same offense may be joined in one information, in all cases in which the same might by different counts be joined in one indictment; and in all cases a defendant or defendants shall have the same right, as to proceedings therein, as the defendant or defendants would have if prosecuted for the same offense upon indictment.

**Source:** Laws 1885, c. 108, § 3, p. 397; R.S.1913, § 9064; C.S.1922, § 10088; C.S.1929, § 29-1603; R.S.1943, § 29-1603; Laws 2002, Third Spec. Sess., LB 1, § 5; Laws 2011, LB669, § 22; Laws 2015, LB268, § 12; Referendum 2016, No. 426.

**Note:** The changes made to section 29-1603 by Laws 2015, LB 268, section 12, have been omitted because of the vote on the referendum at the November 2016 general election.

## ARTICLE 18

### MOTIONS AND ISSUES ON INDICTMENT

#### Section

- 29-1816. Arraignment of accused; when considered waived; accused younger than eighteen years of age; move court to waive jurisdiction to juvenile court; findings for decision; transfer to juvenile court; effect; appeal.
- 29-1822. Mental incompetency of accused after crime commission; effect; capital punishment; stay of execution.
- 29-1823. Mental incompetency of accused before trial; determination by judge; effect; costs; hearing; commitment proceeding.

#### **29-1816 Arraignment of accused; when considered waived; accused younger than eighteen years of age; move court to waive jurisdiction to juvenile court; findings for decision; transfer to juvenile court; effect; appeal.**

(1)(a) The accused may be arraigned in county court or district court:

(i) If the accused was eighteen years of age or older when the alleged offense was committed;

(ii) If the accused was younger than eighteen years of age and was fourteen years of age or older when an alleged offense punishable as a Class I, IA, IB, IC, ID, II, or IIA felony was committed;

(iii) If the alleged offense is a traffic offense as defined in section 43-245; or

(iv) Until January 1, 2017, if the accused was seventeen years of age when an alleged offense described in subdivision (1) of section 43-247 was committed.

(b) Arraignment in county court or district court shall be by reading to the accused the complaint or information, unless the reading is waived by the accused when the nature of the charge is made known to him or her. The accused shall then be asked whether he or she is guilty or not guilty of the offense charged. If the accused appears in person and by counsel and goes to trial before a jury regularly impaneled and sworn, he or she shall be deemed to have waived arraignment and a plea of not guilty shall be deemed to have been made.

(2) At the time of the arraignment, the county court or district court shall advise the accused, if the accused was younger than eighteen years of age at the time the alleged offense was committed, that the accused may move the county



court or district court at any time not later than thirty days after arraignment, unless otherwise permitted by the court for good cause shown, to waive jurisdiction in such case to the juvenile court for further proceedings under the Nebraska Juvenile Code. This subsection does not apply if the case was transferred to county court or district court from juvenile court.

(3) For motions to transfer a case from the county court or district court to juvenile court:

(a) The county court or district court shall schedule a hearing on such motion within fifteen days. The customary rules of evidence shall not be followed at such hearing. The accused shall be represented by an attorney. The criteria set forth in section 43-276 shall be considered at such hearing. After considering all the evidence and reasons presented by both parties, the case shall be transferred to juvenile court unless a sound basis exists for retaining the case in county court or district court; and

(b) The county court or district court shall set forth findings for the reason for its decision. If the county court or district court determines that the accused should be transferred to the juvenile court, the complete file in the county court or district court shall be transferred to the juvenile court and the complaint, indictment, or information may be used in place of a petition therein. The county court or district court making a transfer shall order the accused to be taken forthwith to the juvenile court and designate where the juvenile shall be kept pending determination by the juvenile court. The juvenile court shall then proceed as provided in the Nebraska Juvenile Code.

(c) An order granting or denying transfer of the case from county or district court to juvenile court shall be considered a final order for the purposes of appeal. Upon entry of an order, any party may appeal to the Court of Appeals within ten days. Such review shall be advanced on the court docket without an extension of time granted to any party except upon a showing of exceptional cause. Appeals shall be submitted, assigned, and scheduled for oral argument as soon as the appellee's brief is due to be filed. The Court of Appeals shall conduct its review in an expedited manner and shall render the judgment and opinion, if any, as speedily as possible. During the pendency of an appeal from an order transferring the case to juvenile court, the juvenile court may enter temporary orders in the best interests of the juvenile.

(4) When the accused was younger than eighteen years of age when an alleged offense was committed, the county attorney or city attorney shall proceed under section 43-274.

**Source:** G.S.1873, c. 58, § 448, p. 822; R.S.1913, § 9092; C.S.1922, § 10117; Laws 1925, c. 105, § 1, p. 294; C.S.1929, § 29-1815; R.S.1943, § 29-1816; Laws 1947, c. 103, § 1(1), p. 291; Laws 1974, LB 620, § 6; Laws 1975, LB 288, § 2; Laws 1987, LB 34, § 1; Laws 2008, LB1014, § 16; Laws 2010, LB800, § 5; Laws 2014, LB464, § 4; Laws 2015, LB265, § 1; Laws 2015, LB605, § 59; Laws 2017, LB11, § 1.  
Effective date August 24, 2017.

**Cross References**

Nebraska Juvenile Code, see section 43-2,129.

**29-1822 Mental incompetency of accused after crime commission; effect; capital punishment; stay of execution.**

A person who becomes mentally incompetent after the commission of a crime or misdemeanor shall not be tried for the offense during the continuance of the incompetency. If, after the verdict of guilty and before judgment pronounced, such person becomes mentally incompetent, then no judgment shall be given while such incompetency shall continue; and if, after judgment and before execution of the sentence, such person shall become mentally incompetent, then in case the punishment be capital, the execution thereof shall be stayed until the recovery of such person from the incompetency.

**Source:** G.S.1873, c. 58, § 454, p. 823; R.S.1913, § 9098; C.S.1922, § 10123; C.S.1929, § 29-1821; R.S.1943, § 29-1822; Laws 1986, LB 1177, § 7; Laws 2015, LB268, § 13; Referendum 2016, No. 426.

**Note:** The changes made to section 29-1822 by Laws 2015, LB 268, section 13, have been omitted because of the vote on the referendum at the November 2016 general election.

**29-1823 Mental incompetency of accused before trial; determination by judge; effect; costs; hearing; commitment proceeding.**

(1) If at any time prior to trial it appears that the accused has become mentally incompetent to stand trial, such disability may be called to the attention of the district or county court by the county attorney or city attorney, by the accused, or by any person for the accused. The judge of the district or county court of the county where the accused is to be tried shall have the authority to determine whether or not the accused is competent to stand trial. The judge may also cause such medical, psychiatric, or psychological examination of the accused to be made as he or she deems warranted and hold such hearing as he or she deems necessary. The cost of the examination, when ordered by the court, shall be the expense of the county in which the crime is charged. The judge may allow any physician, psychiatrist, or psychologist a reasonable fee for his or her services, which amount, when determined by the judge, shall be certified to the county board which shall cause payment to be made. Should the judge determine after a hearing that the accused is mentally incompetent to stand trial and that there is a substantial probability that the accused will become competent within the foreseeable future, the judge shall order the accused to be committed to a state hospital for the mentally ill or some other appropriate state-owned or state-operated facility for appropriate treatment until such time as the disability may be removed.

(2) Within six months after the commencement of the treatment ordered by the district or county court, and every six months thereafter until either the disability is removed or other disposition of the accused has been made, the court shall hold a hearing to determine (a) whether the accused is competent to stand trial or (b) whether or not there is a substantial probability that the accused will become competent within the foreseeable future.

(3) If it is determined that there is not a substantial probability that the accused will become competent within the foreseeable future, then the state shall either (a) commence the applicable civil commitment proceeding that would be required to commit any other person for an indefinite period of time or (b) release the accused. If during the period of time between the six-month review hearings set forth in subsection (2) of this section it is the opinion of the Department of Health and Human Services that the accused is competent to stand trial, the department shall file a report outlining its opinion with the court, and within twenty-one days after such report being filed, the court shall

hold a hearing to determine whether or not the accused is competent to stand trial. The state shall pay the cost of maintenance and care of the accused during the period of time ordered by the court for treatment to remove the disability.

**Source:** Laws 1967, c. 174, § 1, p. 489; Laws 1997, LB 485, § 1; Laws 2017, LB259, § 4.  
Operative date August 24, 2017.

**Cross References**

**Attendance of witnesses**, right of accused to compel, see Article I, section 11, Constitution of Nebraska.

**ARTICLE 19**

**PREPARATION FOR TRIAL**

(a) TESTIMONY IN GENERAL

Section

29-1901. Subpoenas in traffic and criminal cases; provisions applicable.

29-1903. Traffic, criminal, and juvenile cases; witness fees and mileage.

(a) TESTIMONY IN GENERAL

**29-1901 Subpoenas in traffic and criminal cases; provisions applicable.**

(1) The statutes governing subpoenas in civil actions and proceedings shall also govern subpoenas in traffic and criminal cases, except that subsections (1), (3), and (4) of section 25-1228 shall not apply to those cases. The payment of compensation and mileage to witnesses in those cases shall be governed by section 29-1903.

(2) A trial subpoena in a traffic and criminal case shall contain the statement specified in subsection (5) of section 25-1223.

**Source:** G.S.1873, c. 58, § 459, p. 824; R.S.1913, § 9099; C.S.1922, § 10124; C.S.1929, § 29-1901; R.S.1943, § 29-1901; Laws 1990, LB 87, § 3; Laws 1992, LB 435, § 1; Laws 1992, LB 1059, § 23; Laws 2017, LB509, § 5.  
Effective date August 24, 2017.

**29-1903 Traffic, criminal, and juvenile cases; witness fees and mileage.**

(1) The amount of the witness fee and mileage in traffic, criminal, and juvenile cases is governed by section 33-139.

(2) A witness in a traffic, criminal, or juvenile case shall be entitled to a witness fee and mileage after appearing in court in response to a subpoena. The clerk of the court shall immediately submit a claim for payment of witness fees and mileage on behalf of all such witnesses to the county clerk in cases involving a violation of state law or to the city clerk in cases involving a violation of a city ordinance. All witness fees and mileage paid by a defendant as part of the court costs ordered by the court to be paid shall be reimbursed to the county or city treasurer as appropriate.

(3) Any person accused of crime amounting to a misdemeanor or felony shall have compulsory process to enforce the attendance of witnesses in his or her behalf.

**Source:** G.S.1873, c. 58, § 461, p. 825; Laws 1885, c. 106, § 1, p. 394; R.S.1913, § 9101; C.S.1922, § 10126; C.S.1929, § 29-1903; R.S.

1943, § 29-1903; Laws 1981, LB 204, § 40; Laws 2017, LB509, § 6.

Effective date August 24, 2017.

## ARTICLE 20

### TRIAL

#### Section

- 29-2004. Jury; how drawn and selected; alternate jurors.  
 29-2005. Peremptory challenges.  
 29-2006. Challenges for cause.  
 29-2020. Bill of exceptions by defendant; request; procedure; exception in capital cases.  
 29-2027. Verdict in trials for murder; conviction by confession; sentencing procedure.

#### **29-2004 Jury; how drawn and selected; alternate jurors.**

(1) All parties may stipulate that the jury may be selected up to thirty-one days prior to the date of trial. The stipulation must be unanimous among all parties and evidenced by a joint stipulation to the county court.

(2) In all cases, except as may be otherwise expressly provided, the accused shall be tried by a jury drawn, summoned, and impaneled according to provisions of the code of civil procedure, except that whenever in the opinion of the court the trial is likely to be a protracted one, the court may, immediately after the jury is impaneled and sworn, direct the calling of one or two additional jurors, to be known as alternate jurors. Such jurors shall be drawn from the same source and in the same manner, and have the same qualifications as regular jurors, and be subject to examination and challenge as such jurors, except that each party shall be allowed one peremptory challenge to each alternate juror. The alternate jurors shall take the proper oath or affirmation and shall be seated near the regular jurors with equal facilities for seeing and hearing the proceedings in the cause, and shall attend at all times upon the trial of the cause in company with the regular jurors. They shall obey all orders and admonitions of the court, and if the regular jurors are ordered to be kept in the custody of an officer during the trial of the cause, the alternate jurors shall also be kept with the other jurors and, except as hereinafter provided, shall be discharged upon the final submission of the cause to the jury. If an information charging a violation of section 28-303 and in which the death penalty is sought contains a notice of aggravation, the alternate jurors shall be retained as provided in section 29-2520. If, before the final submission of the cause a regular juror dies or is discharged, the court shall order the alternate juror, if there is but one, to take his or her place in the jury box. If there are two alternate jurors the court shall select one by lot, who shall then take his or her place in the jury box. After an alternate juror is in the jury box he or she shall be subject to the same rules as a regular juror.

**Source:** G.S.1873, c. 58, § 466, p. 825; R.S.1913, § 9107; C.S.1922, § 10132; C.S.1929, § 29-2004; Laws 1933, c. 38, § 1, p. 242; C.S.Supp.,1941, § 29-2004; R.S.1943, § 29-2004; Laws 1996, LB 1249, § 2; Laws 2002, Third Spec. Sess., LB 1, § 6; Laws 2015, LB268, § 14; Referendum 2016, No. 426.

**Note:** The changes made to section 29-2004 by Laws 2015, LB 268, section 14, have been omitted because of the vote on the referendum at the November 2016 general election.

## Cross References

**Change of venue**, criminal case pending in county with population of four thousand or less without adequate facilities for jury trials, see section 25-412.01.

**For drawing and selecting of jurors**, see Chapter 25, article 16.

**29-2005 Peremptory challenges.**

Every person arraigned for any crime punishable with death, or imprisonment for life, shall be admitted on his or her trial to a peremptory challenge of twelve jurors, and no more; every person arraigned for any offense that may be punishable by imprisonment for a term exceeding eighteen months and less than life, shall be admitted to a peremptory challenge of six jurors; and in all other criminal trials, the defendant shall be allowed a peremptory challenge of three jurors. The attorney prosecuting on behalf of the state shall be admitted to a peremptory challenge of twelve jurors in all cases when the offense is punishable with death or imprisonment for life, six jurors when the offense is punishable by imprisonment for a term exceeding eighteen months and less than life, and three jurors in all other cases; *Provided*, that in all cases where alternate jurors are called, as provided in section 29-2004, then in that case both the defendant and the attorney prosecuting for the state shall each be allowed one added peremptory challenge to each alternate juror.

**Source:** G.S.1873, c. 58, § 467, p. 826; R.S.1913, § 9108; Laws 1915, c. 166, § 1, p. 337; C.S.1922, § 10133; C.S.1929, § 29-2005; Laws 1933, c. 38, § 2, p. 243; C.S.Supp.,1941, § 29-2005; R.S.1943, § 29-2005; Laws 1981, LB 213, § 1; Laws 2015, LB268, § 15; Referendum 2016, No. 426.

**Note:** The changes made to section 29-2005 by Laws 2015, LB 268, section 15, have been omitted because of the vote on the referendum at the November 2016 general election.

**29-2006 Challenges for cause.**

The following shall be good causes for challenge to any person called as a juror or alternate juror, on the trial of any indictment: (1) That he was a member of the grand jury which found the indictment; (2) that he has formed or expressed an opinion as to the guilt or innocence of the accused; *Provided*, if a juror or alternate juror shall state that he has formed or expressed an opinion as to the guilt or innocence of the accused, the court shall thereupon proceed to examine, on oath, such juror or alternate juror as to the ground of such opinion; and if it shall appear to have been founded upon reading newspaper statements, communications, comments or reports, or upon rumor or hearsay, and not upon conversations with witnesses of the transactions or reading reports of their testimony or hearing them testify, and the juror or alternate juror shall say on oath that he feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that such juror or alternate juror is impartial and will render such verdict, may, in its discretion, admit such juror or alternate juror as competent to serve in such case; (3) in indictments for an offense the punishment whereof is capital, that his opinions are such as to preclude him from finding the accused guilty of an offense punishable with death; (4) that he is a relation within the fifth degree to the person alleged to be injured or attempted to be injured, or to the person on whose complaint the prosecution was instituted, or to the defendant; (5) that he has served on the petit jury which was sworn in the same cause against the same defendant and which jury either rendered a verdict which was set aside or was discharged, after hearing the evidence; (6) that he has served as a juror

in a civil case brought against the defendant for the same act; (7) that he has been in good faith subpoenaed as a witness in the case; (8) that he is a habitual drunkard; (9) the same challenges shall be allowed in criminal prosecutions that are allowed to parties in civil cases.

**Source:** G.S.1873, c. 58, § 468, p. 826; R.S.1913, § 9109; C.S.1922, § 10134; C.S.1929, § 29-2006; Laws 1933, c. 38, § 3, p. 243; C.S.Supp.,1941, § 29-2006; R.S.1943, § 29-2006; Laws 2015, LB268, § 16; Referendum 2016, No. 426.

**Note:** The changes made to section 29-2006 by Laws 2015, LB 268, section 16, have been omitted because of the vote on the referendum at the November 2016 general election.

**29-2020 Bill of exceptions by defendant; request; procedure; exception in capital cases.**

Except as provided in section 29-2525 for cases when the punishment is capital, in all criminal cases when a defendant feels aggrieved by any opinion or decision of the court, he or she may order a bill of exceptions. The ordering, preparing, signing, filing, correcting, and amending of the bill of exceptions shall be governed by the rules established in such matters in civil cases.

**Source:** G.S.1873, c. 58, § 482, p. 829; R.S.1913, § 9123; C.S.1922, § 10148; C.S.1929, § 29-2020; R.S.1943, § 29-2020; Laws 1959, c. 120, § 1, p. 452; Laws 1961, c. 135, § 2, p. 390; Laws 1990, LB 829, § 1; Laws 2015, LB268, § 17; Referendum 2016, No. 426.

**Note:** The changes made to section 29-2020 by Laws 2015, LB 268, section 17, have been omitted because of the vote on the referendum at the November 2016 general election.

**Cross References**

**Error proceedings by county attorney, decision on appeal, see section 29-2316.**

**29-2027 Verdict in trials for murder; conviction by confession; sentencing procedure.**

In all trials for murder the jury before whom such trial is had, if they find the prisoner guilty thereof, shall ascertain in their verdict whether it is murder in the first or second degree or manslaughter; and if such person is convicted by confession in open court, the court shall proceed by examination of witnesses in open court, to determine the degree of the crime, and shall pronounce sentence accordingly or as provided in sections 29-2519 to 29-2524 for murder in the first degree.

**Source:** G.S.1873, c. 58, § 489, p. 830; R.S.1913, § 9130; C.S.1922, § 10155; C.S.1929, § 29-2027; R.S.1943, § 29-2027; Laws 2002, Third Spec. Sess., LB 1, § 7; Laws 2015, LB268, § 18; Referendum 2016, No. 426.

**Note:** The changes made to section 29-2027 by Laws 2015, LB 268, section 18, have been omitted because of the vote on the referendum at the November 2016 general election.

**ARTICLE 22**

**JUDGMENT ON CONVICTION**

(a) JUDGMENT ON CONVICTION

Section 29-2204. Sentence for felony other than Class III, IIIA, or IV felony; court; duties; study of offender; when; defendant under eighteen years of age; disposition.

- Section  
 29-2206. Fine and costs; commitment until paid; installments; deduction from bond; suspension or revocation of motor vehicle operator's license.  
 29-2206.01. Fine and costs; payment of installments; violation; penalty; hearing.  
 29-2208. Fines or costs; person financially unable to pay; hearing; determination; court or magistrate; powers; order; operate as release.
- (c) PROBATION
- 29-2261. Presentence investigation, when; contents; psychiatric examination; persons having access to records; reports authorized.
- (d) COMMUNITY SERVICE
- 29-2277. Terms, defined.  
 29-2278. Community service; sentencing; when; failure to perform; effect; exception to eligibility.  
 29-2279. Community service; length.

(a) JUDGMENT ON CONVICTION

**29-2204 Sentence for felony other than Class III, IIIA, or IV felony; court; duties; study of offender; when; defendant under eighteen years of age; disposition.**

(1) Except when a term of life imprisonment is required by law, in imposing a sentence upon an offender for any class of felony other than a Class III, IIIA, or IV felony, the court shall fix the minimum and the maximum terms of the sentence to be served within the limits provided by law. The maximum term shall not be greater than the maximum limit provided by law, and:

(a) The minimum term fixed by the court shall be any term of years less than the maximum term imposed by the court; or

(b) The minimum term shall be the minimum limit provided by law.

(2) When a maximum term of life is imposed by the court for a Class IB felony, the minimum term fixed by the court shall be:

(a) Any term of years not less than the minimum limit provided by law; or

(b) A term of life imprisonment.

(3) When a maximum term of life is imposed by the court for a Class IA felony, the minimum term fixed by the court shall be:

(a) A term of life imprisonment; or

(b) Any term of years not less than the minimum limit provided by law after consideration of the mitigating factors in section 28-105.02, if the defendant was under eighteen years of age at the time he or she committed the crime for which he or she was convicted.

(4) When the court is of the opinion that imprisonment may be appropriate but desires more detailed information as a basis for determining the sentence to be imposed than has been provided by the presentence report required by section 29-2261, the court may commit an offender to the Department of Correctional Services. During that time, the department shall conduct a complete study of the offender as provided in section 29-2204.03.

(5) Except when a term of life is required by law, whenever the defendant was under eighteen years of age at the time he or she committed the crime for which he or she was convicted, the court may, in its discretion, instead of imposing the penalty provided for the crime, make such disposition of the defendant as the court deems proper under the Nebraska Juvenile Code.

(6)(a) When imposing an indeterminate sentence upon an offender under this section, the court shall:

(i) Advise the offender on the record the time the offender will serve on his or her minimum term before attaining parole eligibility assuming that no good time for which the offender will be eligible is lost; and

(ii) Advise the offender on the record the time the offender will serve on his or her maximum term before attaining mandatory release assuming that no good time for which the offender will be eligible is lost.

(b) If any discrepancy exists between the statement of the minimum limit of the sentence and the statement of parole eligibility or between the statement of the maximum limit of the sentence and the statement of mandatory release, the statements of the minimum limit and the maximum limit shall control the calculation of the offender's term.

(c) If the court imposes more than one sentence upon an offender or imposes a sentence upon an offender who is at that time serving another sentence, the court shall state whether the sentences are to be concurrent or consecutive.

**Source:** G.S.1873, c. 58, § 498, p. 832; R.S.1913, § 9140; C.S.1922, § 10165; C.S.1929, § 29-2205; R.S.1943, § 29-2204; Laws 1974, LB 620, § 7; Laws 1988, LB 790, § 3; Laws 1993, LB 31, § 9; Laws 1993, LB 529, § 1; Laws 1993, LB 627, § 1; Laws 1994, LB 988, § 8; Laws 1995, LB 371, § 12; Laws 1997, LB 364, § 14; Laws 1998, LB 1073, § 10; Laws 2002, Third Spec. Sess., LB 1, § 8; Laws 2011, LB12, § 2; Laws 2013, LB561, § 2; Laws 2015, LB268, § 19; Laws 2015, LB605, § 60; Referendum 2016, No. 426.

**Note:** The changes made to section 29-2204 by Laws 2015, LB 268, section 19, have been omitted because of the vote on the referendum at the November 2016 general election.

#### Cross References

Nebraska Juvenile Code, see section 43-2,129.

### **29-2206 Fine and costs; commitment until paid; installments; deduction from bond; suspension or revocation of motor vehicle operator's license.**

(1)(a) In all cases in which courts or magistrates have now or may hereafter have the power to punish offenses, either in whole or in part, by requiring the offender to pay fines or costs, or both, such courts or magistrates may make it a part of the sentence that the party stand committed and be imprisoned in the jail of the proper county until the fines or costs are paid or secured to be paid or the offender is otherwise discharged according to law if the court or magistrate determines that the offender has the financial ability to pay such fines or costs. The court or magistrate may make such determination at the sentencing hearing or at a separate hearing prior to sentencing. A separate hearing shall not be required. In making such determination, the court or magistrate may consider the information or evidence adduced in an earlier proceeding pursuant to section 29-3902, 29-3903, 29-3906, or 29-3916. At any such hearing, the offender shall have the opportunity to present information as to his or her income, assets, debts, or other matters affecting his or her financial ability to pay. Following such hearing and prior to imposing sentence, the court or magistrate shall determine the offender's financial ability to pay the fines or costs, including his or her financial ability to pay in installments under subsection (2) of this section.



(b) If the court or magistrate determines that the offender is financially able to pay the fines or costs and the offender refuses to pay, the court or magistrate may:

(i) Make it a part of the sentence that the offender stand committed and be imprisoned in the jail of the proper county until the fines or costs are paid or secured to be paid or the offender is otherwise discharged according to law; or

(ii) Order the offender, in lieu of paying such fines or costs, to complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279.

(c) If the court or magistrate determines that the offender is financially unable to pay the fines or costs, the court or magistrate:

(i) Shall either:

(A) Impose a sentence without such fines or costs; or

(B) Enter an order pursuant to subdivision (1)(d) of this section discharging the offender of such fines or costs; and

(ii) May order, as a term of the offender's sentence or as a condition of probation, that he or she complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279.

(d) An order discharging the offender of any fines or costs shall be set forth in or accompanied by a judgment entry. Such order shall operate as a complete release of such fines or costs.

(2) If the court or magistrate determines, pursuant to subsection (1) of this section, that an offender is financially unable to pay such fines or costs in one lump sum but is financially capable of paying in installments, the court or magistrate shall make arrangements suitable to the court or magistrate and to the offender by which the offender may pay in installments. The court or magistrate shall enter an order specifying the terms of such arrangements and the dates on which payments are to be made. When the judgment of conviction provides for the suspension or revocation of a motor vehicle operator's license and the court authorizes the payment of fines or costs by installments, the revocation or suspension shall be effective as of the date of judgment.

(3) As an alternative to a lump-sum payment or as an alternative or in conjunction with installment payments, the court or magistrate may deduct fines or costs from a bond posted by the offender to the extent that such bond is not otherwise encumbered by a valid lien, levy, execution, or assignment to counsel of record or the person who posted the bond.

**Source:** G.S.1873, c. 58, § 500, p. 833; R.S.1913, § 9142; C.S.1922, § 10167; C.S.1929, § 29-2207; R.S.1943, § 29-2206; Laws 1971, LB 1010, § 2; Laws 1974, LB 966, § 1; Laws 1979, LB 111, § 1; Laws 1988, LB 370, § 6; Laws 2012, LB722, § 1; Laws 2017, LB259, § 5.

Operative date July 1, 2019.

**29-2206.01 Fine and costs; payment of installments; violation; penalty; hearing.**

Installments provided for in section 29-2206 shall be paid pursuant to the order entered by the court or magistrate. Any person who fails to comply with the terms of such order shall be liable for punishment for contempt, unless such

person has the leave of the court or magistrate in regard to such noncompliance or such person requests a hearing pursuant to section 29-2412 and establishes at such hearing that he or she is financially unable to pay.

**Source:** Laws 1971, LB 1010, § 3; Laws 2017, LB259, § 6.

Operative date July 1, 2019.

**29-2208 Fines or costs; person financially unable to pay; hearing; determination; court or magistrate; powers; order; operate as release.**

(1) A person who has been ordered to pay fines or costs and who has not been arrested or brought into custody as described in subdivision (1)(a) of section 29-2412 but who believes himself or herself to be financially unable to pay such fines or costs may request a hearing to determine such person's financial ability to pay such fines or costs. The hearing shall be scheduled on the first regularly scheduled court date following the date of the request. Pending the hearing, the person shall not be arrested or brought into custody for failure to pay such fines or costs or failure to appear before a court or magistrate on the due date of such fines or costs.

(2) At the hearing, the person shall have the opportunity to present information as to his or her income, assets, debts, or other matters affecting his or her financial ability to pay. Following the hearing, the court or magistrate shall determine the person's financial ability to pay the fines or costs, including his or her financial ability to pay in installments as described in section 29-2206.

(3) If the court or magistrate determines that the person is financially able to pay the fines or costs and the person refuses to pay, the court or magistrate may:

(a) Deny the person's request for relief; or

(b) Enter an order pursuant to subsection (5) of this section discharging the person of such fines or costs and order the person to complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279.

(4) If the court or magistrate determines that the person is financially unable to pay the fines or costs, the court or magistrate:

(a) Shall either:

(i) Enter an order pursuant to subsection (5) of this section discharging the person of such fines or costs; or

(ii) If the person is subject to an order to pay installments pursuant to section 29-2206, the court or magistrate shall either enter an order pursuant to subsection (5) of this section discharging the person of such obligation or make any necessary modifications to the order specifying the terms of the installment payments as justice may require and that will enable the person to pay the fines or costs; and

(b) May order the person to complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279.

(5) An order discharging the person of fines or costs shall be set forth in or accompanied by a judgment entry. Such order shall operate as a complete release of such fines or costs.

**Source:** Laws 2017, LB259, § 12.

Operative date July 1, 2019.

## (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, substance abuse evaluation, 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, alcohol and drug counselors, mental health practitioners, psychiatrists, and psychologists licensed or certified under the Uniform Credentialing Act to conduct substance abuse evaluations and treatment, 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, evaluation, 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.

(7) The court shall permit inspection of the presentence report, substance abuse evaluation, or psychiatric examination or parts of the report, evaluation, or examination, as determined by the court, by the prosecuting attorney and defense counsel. Beginning July 1, 2016, such inspection shall be by electronic access only unless the court determines such access is not available to the prosecuting attorney or defense counsel. The State Court Administrator shall determine and develop the means of electronic access to such presentence reports, evaluations, and examinations. Upon application by the prosecuting attorney or defense counsel, the court may order that addresses, telephone numbers, and other contact information for victims or witnesses named in the report, evaluation, or examination be redacted upon a showing by a preponderance of the evidence that such redaction is warranted in the interests of public safety. The court may permit inspection of the presentence report, substance abuse evaluation, or psychiatric examination or examination of parts of the report, evaluation, or examination by any 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.

(8) If an offender is sentenced to imprisonment, a copy of the report of any presentence investigation, substance abuse evaluation, 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.

(9) Notwithstanding subsections (6) and (7) 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, substance abuse evaluations, 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; Laws 2011, LB390, § 3; Laws 2015, LB268, § 20; Laws 2015, LB504, § 1; Referendum 2016, No. 426.

**Note:** The changes made to section 29-2261 by Laws 2015, LB 268, section 20, have been omitted because of the vote on the referendum at the November 2016 general election.

**Cross References**

**Medicine and Surgery Practice Act**, see section 38-2001.

**Mental Health Practice Act**, see section 38-2101.

**Uniform Credentialing Act**, see section 38-101.

(d) COMMUNITY SERVICE

**29-2277 Terms, defined.**

As used in sections 29-2277 to 29-2279, unless the context otherwise requires:

- (1) Agency means any public or governmental unit, institution, division, or agency or any private nonprofit organization which provides services intended to enhance the social welfare or general well-being of the community, which agrees to accept community service from offenders and to supervise and report the progress of such community service to the court or its representative;
- (2) Community correctional facility or program has the same meaning as in section 47-621; and
- (3) Community service means uncompensated labor for an agency to be performed by an offender when the offender is not working or attending school.

**Source:** Laws 1986, LB 528, § 1; Laws 2017, LB259, § 7.

Operative date July 1, 2019.

**29-2278 Community service; sentencing; when; failure to perform; effect; exception to eligibility.**

An offender may be sentenced to community service (1) as an alternative to a fine, incarceration, or supervised probation, or in lieu of incarceration if he or she fails to pay a fine as ordered, except when the violation of a misdemeanor or felony requires mandatory incarceration or imposition of a fine, (2) as a condition of probation, or (3) in addition to any other sanction. The court or magistrate shall establish the terms and conditions of community service including, but not limited to, a reasonable time limit for completion. The performance or completion of a sentence of community service or an order to complete community service may be supervised or confirmed by a community correctional facility or program or another similar entity, as ordered by the court or magistrate. If an offender fails to perform community service as ordered by the court or magistrate, he or she may be arrested and after a hearing may be resentenced on the original charge, have probation revoked, or be found in contempt of court. No person convicted of an offense involving serious bodily injury or sexual assault shall be eligible for community service.

**Source:** Laws 1986, LB 528, § 2; Laws 2017, LB259, § 8.

Operative date July 1, 2019.

**29-2279 Community service; length.**

The length of a community service sentence shall be as follows:

- (1) Pursuant to section 29-2206, 29-2208, or 29-2412, for an infraction, not less than four nor more than twenty hours;

(2) For a violation of a city ordinance that is an infraction and not pursuant to section 29-2206, 29-2208, or 29-2412, not less than four hours;

(3) For a Class IV or Class V misdemeanor, not less than four nor more than eighty hours;

(4) For a Class III or Class IIIA misdemeanor, not less than eight nor more than one hundred fifty hours;

(5) For a Class I or Class II misdemeanor, not less than twenty nor more than four hundred hours;

(6) For a Class IIIA or Class IV felony, not less than two hundred nor more than three thousand hours; and

(7) For a Class III felony, not less than four hundred nor more than six thousand hours.

**Source:** Laws 1986, LB 528, § 3; Laws 1997, LB 364, § 15; Laws 2017, LB259, § 9.

Operative date July 1, 2019.

**ARTICLE 24**

**EXECUTION OF SENTENCES**

Section

29-2404. Misdemeanor cases; fines and costs; judgment; levy; commitment.

29-2407. Judgments for fines, costs, and forfeited recognizances; lien; exemptions; duration.

29-2412. Fine and costs; financial ability to pay; hearing; nonpayment; commutation upon confinement; credit; amount.

**29-2404 Misdemeanor cases; fines and costs; judgment; levy; commitment.**

In all cases of misdemeanor in which courts or magistrates shall have power to fine any offender, and shall render judgment for such fine, it shall be lawful to issue executions for the same, with the costs taxed against the offender, to be levied on the goods and chattels of any such offender, and, for want of the same, upon the body of the offender, who shall, following a determination that the offender has the financial ability to pay such fine pursuant to section 29-2412, be committed to the jail of the proper county until the fine and costs be paid, or secured to be paid, or the offender be otherwise discharged according to law.

**Source:** G.S.1873, c. 58, § 521, p. 837; R.S.1913, § 9191; C.S.1922, § 10198; C.S.1929, § 29-2404; R.S.1943, § 29-2404; Laws 2017, LB259, § 10.

Operative date July 1, 2019.

**29-2407 Judgments for fines, costs, and forfeited recognizances; lien; exemptions; duration.**

Judgments for fines and costs in criminal cases shall be a lien upon all the property of the defendant within the county from the time of docketing the case by the clerk of the proper court, and judgments upon forfeited recognizance shall be a like lien from the time of forfeiture. No property of any convict shall be exempt from execution issued upon any such judgment as set out in this section against such convict except in cases when the convict is sentenced to a Department of Correctional Services adult correctional facility for a period of

more than two years or to suffer death, in which cases there shall be the same exemptions as at the time may be provided by law for civil cases. The lien on real estate of any such judgment for costs shall terminate as provided in section 25-1716.

**Source:** G.S.1873, c. 58, § 524, p. 837; R.S.1913, § 9194; C.S.1922, § 10201; C.S.1929, § 29-2407; R.S.1943, § 29-2407; Laws 1974, LB 666, § 2; Laws 1993, LB 31, § 11; Laws 2015, LB268, § 21; Referendum 2016, No. 426.

**Note:** The changes made to section 29-2407 by Laws 2015, LB 268, section 21, have been omitted because of the vote on the referendum at the November 2016 general election.

**Cross References**

**Exemptions in civil cases,** see section 25-1552 et seq.

**29-2412 Fine and costs; financial ability to pay; hearing; nonpayment; commutation upon confinement; credit; amount.**

(1) Beginning July 1, 2019:

(a) Any person arrested and brought into custody on a warrant for failure to pay fines or costs, for failure to appear before a court or magistrate on the due date of such fines or costs, or for failure to comply with the terms of an order pursuant to sections 29-2206 and 29-2206.01, shall be entitled to a hearing on the first regularly scheduled court date following the date of arrest. The purpose of such hearing shall be to determine the person's financial ability to pay such fines or costs. At the hearing, the person shall have the opportunity to present information as to his or her income, assets, debts, or other matters affecting his or her financial ability to pay. Following the hearing, the court or magistrate shall determine the person's ability to pay the fines or costs, including his or her financial ability to pay by installment payments as described in section 29-2206;

(b) If the court or magistrate determines that the person is financially able to pay the fines or costs and the person refuses to pay, the court or magistrate may:

(i) Order the person to be confined in the jail of the proper county until the fines or costs are paid or secured to be paid or the person is otherwise discharged pursuant to subsection (4) of this section; or

(ii) Enter an order pursuant to subdivision (1)(d) of this section discharging the person of such fines or costs and order the person to complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279;

(c) If the court or magistrate determines that the person is financially unable to pay the fines or costs, the court or magistrate:

(i) Shall either:

(A) Enter an order pursuant to subdivision (1)(d) of this section discharging the person of such fines or costs; or

(B) If the person is subject to an order to pay installments pursuant to section 29-2206, the court or magistrate shall either enter an order pursuant to subdivision (1)(d) of this section discharging the person of such obligation or make any necessary modifications to the order specifying the terms of the installment payments as justice may require and that will enable the person to pay the fines or costs; and

(ii) May order the person to complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279; and

(d) An order discharging the person of fines or costs shall be set forth in or accompanied by a judgment entry. Such order shall operate as a complete release of such fines or costs.

(2) Whenever it is made satisfactorily to appear to the district court, or to the county judge of the proper county, after all legal means have been exhausted, that any person who is confined in jail for any fines or costs of prosecution for any criminal offense has no estate with which to pay such fines or costs, it shall be the duty of such court or judge, on his or her own motion or upon the motion of the person so confined, to discharge such person from further imprisonment for such fines or costs, which discharge shall operate as a complete release of such fines or costs.

(3) Nothing in this section shall authorize any person to be discharged from imprisonment before the expiration of the time for which he or she may be sentenced to be imprisoned as part of his or her punishment.

(4)(a) Any person held in custody for nonpayment of fines or costs or for default on an installment shall be entitled to a credit on the fines, costs, or installment of one hundred fifty dollars for each day so held.

(b) In no case shall a person held in custody for nonpayment of fines or costs be held in such custody for more days than the maximum number to which he or she could have been sentenced if the penalty set by law includes the possibility of confinement.

**Source:** G.S.1873, c. 58, § 528, p. 838; R.S.1913, § 9199; C.S.1922, § 10206; C.S.1929, § 29-2412; R.S.1943, § 29-2412; Laws 1959, c. 122, § 2, p. 455; Laws 1979, LB 111, § 2; Laws 1986, LB 528, § 5; Laws 1988, LB 370, § 7; Laws 2010, LB712, § 17; Laws 2017, LB259, § 11.

Operative date August 24, 2017.

**ARTICLE 25**

**SPECIAL PROCEDURE IN CASES OF HOMICIDE**

Section	
29-2501.	Omitted.
29-2502.	Omitted.
29-2519.	Statement of intent.
29-2520.	Aggravation hearing; procedure.
29-2521.	Sentencing determination proceeding.
29-2521.01.	Legislative findings.
29-2521.02.	Criminal homicide cases; review and analysis by Supreme Court; manner.
29-2521.03.	Criminal homicide cases; appeal; sentence; Supreme Court review.
29-2521.04.	Criminal homicide cases; Supreme Court review and analyze; district court; provide records.
29-2521.05.	Aggravating circumstances; interlocutory appeal prohibited.
29-2522.	Sentence; considerations; determination; contents.
29-2523.	Aggravating and mitigating circumstances.
29-2524.	Sections; how construed.
29-2524.01.	Criminal homicide; report filed by county attorney; contents; time of filing.
29-2524.02.	State Court Administrator; criminal homicide report; provide forms.
29-2525.	Capital punishment cases; appeal; procedure; expedited opinion.
29-2527.	Briefs; payment for printing by county.
29-2528.	Death penalty cases; Supreme Court; orders.



Section	
29-2537.	Convicted person; appears to be incompetent; notice to judge; suspend sentence; commission appointed; findings; suspension of execution; when; annual review.
29-2538.	Suspension of execution pending investigation; convict found competent; Supreme Court; appoint a day of execution.
29-2539.	Commission members; mileage; payment.
29-2540.	Female convicted person; pregnant; notice to judge; procedures.
29-2541.	Female convicted person; finding convicted person is pregnant; judge; duties; costs.
29-2542.	Escaped convict; return; notify Supreme Court; fix date of execution.
29-2543.	Person convicted of crime sentenced to death; Supreme Court; warrant.
29-2546.	Reversal of judgment of conviction; delivery of convicted person to custody of sheriff; await further judgment and order of court.

**29-2501 Omitted.**

**Source:** Laws 2015, LB268, § 22; Referendum 2016, No. 426.

**Note:** Section 29-2501, newly enacted by Laws 2015, LB 268, section 22, and assigned by the Revisor of Statutes to section 29-2501, has been omitted because of the vote on the referendum at the November 2016 general election.

**29-2502 Omitted.**

**Source:** Laws 2015, LB268, § 23; Referendum 2016, No. 426.

**Note:** Section 29-2502, newly enacted by Laws 2015, LB 268, section 23, and assigned by the Revisor of Statutes to section 29-2502, has been omitted because of the vote on the referendum at the November 2016 general election.

**29-2519 Statement of intent.**

(1) The Legislature hereby finds that it is reasonable and necessary to establish mandatory standards for the imposition of the sentence of death; that the imposition of the death penalty in every instance of the commission of the crimes specified in section 28-303 fails to allow for mitigating factors which may dictate against the penalty of death; and that the rational imposition of the death sentence requires the establishment of specific legislative guidelines to be applied in individual cases by the court. The Legislature therefor determines that the death penalty should be imposed only for the crimes set forth in section 28-303 and, in addition, that it shall only be imposed in those instances when the aggravating circumstances existing in connection with the crime outweigh the mitigating circumstances, as set forth in sections 29-2520 to 29-2524.

(2) The Legislature hereby finds and declares that:

(a) The decision of the United States Supreme Court in *Ring v. Arizona* (2002) requires that Nebraska revise its sentencing process in order to ensure that rights of persons accused of murder in the first degree, as required under the Sixth and Fourteenth Amendments of the United States Constitution, are protected;

(b) The changes made by Laws 2002, LB 1, Ninety-seventh Legislature, Third Special Session, are intended to be procedural only in nature and ameliorative of the state's prior procedures for determination of aggravating circumstances in the sentencing process for murder in the first degree;

(c) The changes made by Laws 2002, LB 1, Ninety-seventh Legislature, Third Special Session, are not intended to alter the substantive provisions of sections 28-303 and 29-2520 to 29-2524;

(d) The aggravating circumstances defined in section 29-2523 have been determined by the United States Supreme Court to be "functional equivalents

of elements of a greater offense” for purposes of the defendant’s Sixth Amendment right, as applied to the states under the Fourteenth Amendment, to a jury determination of such aggravating circumstances, but the aggravating circumstances are not intended to constitute elements of the crime generally unless subsequently so required by the state or federal constitution; and

(e) To the extent that such can be applied in accordance with state and federal constitutional requirements, it is the intent of the Legislature that the changes to the murder in the first degree sentencing process made by Laws 2002, LB 1, Ninety-seventh Legislature, Third Special Session, shall apply to any murder in the first degree sentencing proceeding commencing on or after November 23, 2002.

**Source:** Laws 1973, LB 268, § 1; Laws 1978, LB 748, § 21; Laws 2002, Third Spec. Sess., LB 1, § 10; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2519 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

### **29-2520 Aggravation hearing; procedure.**

(1) Whenever any person is found guilty of a violation of section 28-303 and the information contains a notice of aggravation as provided in section 29-1603, the district court shall, as soon as practicable, fix a date for an aggravation hearing to determine the alleged aggravating circumstances. If no notice of aggravation has been filed, the district court shall enter a sentence of life imprisonment.

(2) Unless the defendant waives his or her right to a jury determination of the alleged aggravating circumstances, such determination shall be made by:

(a) The jury which determined the defendant’s guilt; or

(b) A jury impaneled for purposes of the determination of the alleged aggravating circumstances if:

(i) The defendant waived his or her right to a jury at the trial of guilt and either was convicted before a judge or was convicted on a plea of guilty or nolo contendere; or

(ii) The jury which determined the defendant’s guilt has been discharged.

A jury required by subdivision (2)(b) of this section shall be impaneled in the manner provided in sections 29-2004 to 29-2010.

(3) The defendant may waive his or her right to a jury determination of the alleged aggravating circumstances. The court shall accept the waiver after determining that it is made freely, voluntarily, and knowingly. If the defendant waives his or her right to a jury determination of the alleged aggravating circumstances, such determination shall be made by a panel of judges as a part of the sentencing determination proceeding as provided in section 29-2521.

(4)(a) At an aggravation hearing before a jury for the determination of the alleged aggravating circumstances, the state may present evidence as to the existence of the aggravating circumstances alleged in the information. The Nebraska Evidence Rules shall apply at the aggravation hearing.

(b) Alternate jurors who would otherwise be discharged upon final submission of the cause to the jury shall be retained during the deliberation of the defendant’s guilt but shall not participate in such deliberations. Such alternate jurors shall serve during the aggravation hearing as provided in section

29-2004 but shall not participate in the jury's deliberations under this subsection.

(c) If the jury serving at the aggravation hearing is the jury which determined the defendant's guilt, the jury may consider evidence received at the trial of guilt for purposes of reaching its verdict as to the existence or nonexistence of aggravating circumstances in addition to the evidence received at the aggravation hearing.

(d) After the presentation and receipt of evidence at the aggravation hearing, the state and the defendant or his or her counsel may present arguments before the jury as to the existence or nonexistence of the alleged aggravating circumstances.

(e) The court shall instruct the members of the jury as to their duty as jurors, the definitions of the aggravating circumstances alleged in the information, and the state's burden to prove the existence of each aggravating circumstance alleged in the information beyond a reasonable doubt.

(f) The jury at the aggravation hearing shall deliberate and return a verdict as to the existence or nonexistence of each alleged aggravating circumstance. Each aggravating circumstance shall be proved beyond a reasonable doubt. Each verdict with respect to each alleged aggravating circumstance shall be unanimous. If the jury is unable to reach a unanimous verdict with respect to an aggravating circumstance, such aggravating circumstance shall not be weighed in the sentencing determination proceeding as provided in section 29-2521.

(g) Upon rendering its verdict as to the determination of the aggravating circumstances, the jury shall be discharged.

(h) If no aggravating circumstance is found to exist, the court shall enter a sentence of life imprisonment. If one or more aggravating circumstances are found to exist, the court shall convene a panel of three judges to hold a hearing to receive evidence of mitigation and sentence excessiveness or disproportionality as provided in subsection (3) of section 29-2521.

**Source:** Laws 1973, LB 268, § 5; Laws 1978, LB 748, § 22; Laws 2002, Third Spec. Sess., LB 1, § 11; Laws 2011, LB12, § 3; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2520 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

#### Cross References

Nebraska Evidence Rules, see section 27-1103.

### **29-2521 Sentencing determination proceeding.**

(1) When a person has been found guilty 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) such person waives his or her right to a jury determination of the alleged aggravating circumstances, the sentence of such person shall be determined by:

(a) A panel of three judges, including the judge who presided at the trial of guilt or who accepted the plea and two additional active district court judges named at random by the Chief Justice of the Supreme Court. The judge who presided at the trial of guilt or who accepted the plea shall act as the presiding judge for the sentencing determination proceeding under this section; or

(b) If the Chief Justice of the Supreme Court has determined that the judge who presided at the trial of guilt or who accepted the plea is disabled or disqualified after receiving a suggestion of such disability or disqualification from the clerk of the court in which the finding of guilty was entered, a panel of three active district court judges named at random by the Chief Justice of the Supreme Court. The Chief Justice of the Supreme Court shall name one member of the panel at random to act as the presiding judge for the sentencing determination proceeding under this section.

(2) In the sentencing determination proceeding before a panel of judges when the right to a jury determination of the alleged aggravating circumstances has been waived, the panel shall, as soon as practicable after receipt of the written report resulting from the presentence investigation ordered as provided in section 29-2261, hold a hearing. At such hearing, evidence may be presented as to any matter that the presiding judge deems relevant to sentence and shall include matters relating to the aggravating circumstances alleged in the information, to any of the mitigating circumstances set forth in section 29-2523, and to sentence excessiveness or disproportionality. The Nebraska Evidence Rules shall apply to evidence relating to aggravating circumstances. Each aggravating circumstance shall be proved beyond a reasonable doubt. Any evidence at the sentencing determination proceeding which the presiding judge deems to have probative value may be received. The state and the defendant or his or her counsel shall be permitted to present argument for or against sentence of death. The presiding judge shall set forth the general order of procedure at the outset of the sentencing determination proceeding. The panel shall make written findings of fact based upon the trial of guilt and the sentencing determination proceeding, identifying which, if any, of the alleged aggravating circumstances have been proven to exist beyond a reasonable doubt. Each finding of fact with respect to each alleged aggravating circumstance shall be unanimous. If the panel is unable to reach a unanimous finding of fact with respect to an aggravating circumstance, such aggravating circumstance shall not be weighed in the sentencing determination proceeding. After the presentation and receipt of evidence and argument, the panel shall determine an appropriate sentence as provided in section 29-2522.

(3) When a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520, the panel of judges shall, as soon as practicable after receipt of the written report resulting from the presentence investigation ordered as provided in section 29-2261, hold a hearing to receive evidence of mitigation and sentence excessiveness or disproportionality. Evidence may be presented as to any matter that the presiding judge deems relevant to (a) mitigation, including, but not limited to, the mitigating circumstances set forth in section 29-2523, and (b) sentence excessiveness or disproportionality as provided in subdivision (3) of section 29-2522. Any such evidence which the presiding judge deems to have probative value may be received. The state and the defendant and his or her counsel shall be permitted to present argument for or against sentence of death. The presiding judge shall set forth the general order of procedure at the outset of the sentencing determination proceeding. After the presentation and receipt of evidence and argument, the panel shall determine an appropriate sentence as provided in section 29-2522.

**Source:** Laws 1973, LB 268, § 6; Laws 2002, Third Spec. Sess., LB 1, § 12; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2521 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

#### **29-2521.01 Legislative findings.**

The Legislature hereby finds that:

(1) Life is the most valuable possession of a human being, and before taking it, the state should apply and follow the most scrupulous standards of fairness and uniformity;

(2) The death penalty, because of its enormity and finality, should never be imposed arbitrarily nor as a result of local prejudice or public hysteria;

(3) State law should be applied uniformly throughout the state and since the death penalty is a statewide law an offense which would not result in a death sentence in one portion of the state should not result in death in a different portion;

(4) Charges resulting from the same or similar circumstances have, in the past, not been uniform and have produced radically differing results; and

(5) In order to compensate for the lack of uniformity in charges which are filed as a result of similar circumstances it is necessary for the Supreme Court to review and analyze all criminal homicides committed under the existing law in order to insure that each case produces a result similar to that arrived at in other cases with the same or similar circumstances.

**Source:** Laws 1978, LB 711, § 1; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2521.01 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

#### **29-2521.02 Criminal homicide cases; review and analysis by Supreme Court; manner.**

The Supreme Court shall within a reasonable time after July 22, 1978, review and analyze all cases involving criminal homicide committed on or after April 20, 1973. Such review and analysis shall examine (1) the facts including mitigating and aggravating circumstances, (2) the charges filed, (3) the crime for which defendant was convicted, and (4) the sentence imposed. Such review shall be updated as new criminal homicide cases occur.

**Source:** Laws 1978, LB 711, § 2; Laws 2000, LB 1008, § 2; Laws 2011, LB390, § 5; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2521.02 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

#### **29-2521.03 Criminal homicide cases; appeal; sentence; Supreme Court review.**

The Supreme Court shall, upon appeal, determine the propriety of the sentence in each case involving a criminal homicide by comparing such case with previous cases involving the same or similar circumstances. No sentence imposed shall be greater than those imposed in other cases with the same or similar circumstances. The Supreme Court may reduce any sentence which it finds not to be consistent with sections 29-2521.01 to 29-2521.04, 29-2522, and 29-2524.

**Source:** Laws 1978, LB 711, § 3; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

§ 29-2521.03

CRIMINAL PROCEDURE

**Note:** The repeal of section 29-2521.03 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

**29-2521.04 Criminal homicide cases; Supreme Court review and analyze; district court; provide records.**

Each district court shall provide all records required by the Supreme Court in order to conduct its review and analysis pursuant to sections 29-2521.01 to 29-2522 and 29-2524.

**Source:** Laws 1978, LB 711, § 4; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2521.04 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

**29-2521.05 Aggravating circumstances; interlocutory appeal prohibited.**

The verdict of a jury as to the existence or nonexistence of the alleged aggravating circumstances or, when the right to a jury determination of the alleged aggravating circumstances has been waived, the determination of a panel of judges with respect thereto, shall not be an appealable order or judgment of the district court, and no appeal may be taken directly from such verdict or determination.

**Source:** Laws 2002, Third Spec. Sess., LB 1, § 13; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2521.05 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

**29-2522 Sentence; considerations; determination; contents.**

The panel of judges for the sentencing determination proceeding shall either unanimously fix the sentence at death or, if the sentence of death was not unanimously agreed upon by the panel, fix the sentence at life imprisonment. Such sentence determination shall be based upon the following considerations:

- (1) Whether the aggravating circumstances as determined to exist justify imposition of a sentence of death;
- (2) Whether sufficient mitigating circumstances exist which approach or exceed the weight given to the aggravating circumstances; or
- (3) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

In each case, the determination of the panel of judges shall be in writing and refer to the aggravating and mitigating circumstances weighed in the determination of the panel.

If an order is entered sentencing the defendant to death, a date for execution shall not be fixed until after the conclusion of the appeal provided for by section 29-2525.

**Source:** Laws 1973, LB 268, § 7; Laws 1978, LB 711, § 5; Laws 1982, LB 722, § 10; Laws 2002, Third Spec. Sess., LB 1 § 14; Laws 2011, LB12, § 4; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2522 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

**29-2523 Aggravating and mitigating circumstances.**

The aggravating and mitigating circumstances referred to in sections 29-2519 to 29-2524 shall be as follows:

(1) Aggravating Circumstances:

(a) The offender was previously convicted of another murder or a crime involving the use or threat of violence to the person, or has a substantial prior history of serious assaultive or terrorizing criminal activity;

(b) The murder was committed in an effort to conceal the commission of a crime, or to conceal the identity of the perpetrator of such crime;

(c) The murder was committed for hire, or for pecuniary gain, or the defendant hired another to commit the murder for the defendant;

(d) The murder was especially heinous, atrocious, cruel, or manifested exceptional depravity by ordinary standards of morality and intelligence;

(e) At the time the murder was committed, the offender also committed another murder;

(f) The offender knowingly created a great risk of death to at least several persons;

(g) The victim was a public servant having lawful custody of the offender or another in the lawful performance of his or her official duties and the offender knew or should have known that the victim was a public servant performing his or her official duties;

(h) The murder was committed knowingly to disrupt or hinder the lawful exercise of any governmental function or the enforcement of the laws; or

(i) The victim was a law enforcement officer engaged in the lawful performance of his or her official duties as a law enforcement officer and the offender knew or reasonably should have known that the victim was a law enforcement officer.

(2) Mitigating Circumstances:

(a) The offender has no significant history of prior criminal activity;

(b) The offender acted under unusual pressures or influences or under the domination of another person;

(c) The crime was committed while the offender was under the influence of extreme mental or emotional disturbance;

(d) The age of the defendant at the time of the crime;

(e) The offender was an accomplice in the crime committed by another person and his or her participation was relatively minor;

(f) The victim was a participant in the defendant's conduct or consented to the act; or

(g) At the time of the crime, the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was impaired as a result of mental illness, mental defect, or intoxication.

**Source:** Laws 1973, LB 268, § 8; Laws 1998, LB 422, § 1; Laws 2002, Third Spec. Sess., LB 1, § 15; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2523 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

**29-2524 Sections; how construed.**

Nothing in sections 25-1140.09, 28-303, 28-313, and 29-2519 to 29-2546 shall be in any way deemed to repeal or limit existing procedures for automatic review of capital cases, nor shall they in any way limit the right of the Supreme Court to reduce a sentence of death to a sentence of life imprisonment in accordance with the provisions of section 29-2308, nor shall they limit the right of the Board of Pardons to commute any sentence of death to a sentence of life imprisonment.

**Source:** Laws 1973, LB 268, § 9; Laws 1978, LB 748, § 23; Laws 1978, LB 711, § 6; Laws 2002, Third Spec. Sess., LB 1 § 16; Laws 2011, LB12, § 5; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2524 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

**Cross References****Constitutional provisions:**

Board of Pardons, see Article IV, section 13, Constitution of Nebraska.

**Board of Pardons,** see section 83-1,126.

**29-2524.01 Criminal homicide; report filed by county attorney; contents; time of filing.**

Each county attorney shall file a report with the State Court Administrator for each criminal homicide case filed by him. The report shall include (1) the initial charge filed, (2) any reduction in the initial charge and whether such reduction was the result of a plea bargain or some other reason, (3) dismissals prior to trial, (4) outcome of the trial including not guilty, guilty as charged, guilty of a lesser included offense, or dismissal, (5) the sentence imposed, (6) whether an appeal was taken, and (7) such other information as may be required by the State Court Administrator. Such report shall be filed not later than thirty days after ultimate disposition of the case by the court.

**Source:** Laws 1978, LB 749, § 1; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2524.01 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

**29-2524.02 State Court Administrator; criminal homicide report; provide forms.**

The State Court Administrator shall provide all forms necessary to carry out sections 29-2524.01 and 29-2524.02.

**Source:** Laws 1978, LB 749, § 2; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2524.02 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

**29-2525 Capital punishment cases; appeal; procedure; expedited opinion.**

In cases when the punishment is capital, no notice of appeal shall be required and within the time prescribed by section 25-1912 for the commencement of proceedings for the reversing, vacating, or modifying of judgments, the clerk of the district court in which the conviction was had shall notify the court reporter who shall prepare a bill of exceptions as in other cases and the clerk shall prepare and file with the Clerk of the Supreme Court a transcript of the record



of the proceedings, for which no charge shall be made. The Clerk of the Supreme Court shall, upon receipt of the transcript, docket the appeal. No payment of a docket fee shall be required.

The Supreme Court shall expedite the rendering of its opinion on the appeal, giving the matter priority over civil and noncapital criminal matters.

**Source:** Laws 1973, LB 268, § 10; Laws 1982, LB 722, § 11; Laws 1995, LB 371, § 16; Laws 2000, LB 921, § 32; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2525 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

#### Cross References

**Bill of exceptions**, see section 25-1140.09.

#### **29-2527 Briefs; payment for printing by county.**

The cost of printing briefs on behalf of any person convicted of an offense for which the punishment adjudged is capital shall be paid by the county.

**Source:** Laws 1973, LB 268, § 12; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2527 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

#### **29-2528 Death penalty cases; Supreme Court; orders.**

In all cases when the death penalty has been imposed by the district court, the Supreme Court shall, after consideration of the appeal, order the prisoner to be discharged, a new trial to be had, or appoint a day certain for the execution of the sentence.

**Source:** Laws 1973, LB 268, § 13; Laws 1982, LB 722, § 12; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2528 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

#### **29-2537 Convicted person; appears to be incompetent; notice to judge; suspend sentence; commission appointed; findings; suspension of execution; when; annual review.**

(1) If any convicted person under sentence of death shall appear to be incompetent, the Director of Correctional Services shall forthwith give notice thereof to a judge of the district court of the judicial district in which the convicted person was tried and sentenced and such judge shall at once make such investigation as shall satisfy him or her as to whether a commission ought to be named to examine such convicted person.

(2) If the court determines that there is not sufficient reason for the appointment of a commission, the court shall so find and refuse to suspend the execution of the convicted person. If the court determines that a commission ought to be appointed to examine such convicted person, the court shall make a finding to that effect and cause it to be entered upon the records of the district court in the county in which such convicted person was sentenced, and, if necessary, the court shall suspend the execution and appoint three licensed mental health professionals employed by the state as a commission to examine such convicted person. The commission shall examine the convicted person to determine whether he or she is competent or incompetent and shall report its findings in writing to the court within ten days after its appointment. If two

members of the commission find the convicted person incompetent, the court shall suspend the convicted person's execution until further order. Thereafter, the court shall appoint a commission annually to review the convicted person's competency. The results of such review shall be provided to the court. If the convicted person is subsequently found to be competent by two members of the commission, the court shall certify that finding to the Supreme Court which shall then establish a date for the enforcement of the convicted person's sentence.

(3) The standard for the determination of competency under this section shall be the same as the standard for determining competency to stand trial.

**Source:** Laws 1973, LB 268, § 22; Laws 1986, LB 1177, § 8; Laws 2009, LB36, § 1; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2537 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

**29-2538 Suspension of execution pending investigation; convict found competent; Supreme Court; appoint a day of execution.**

If a court has suspended the execution of the convicted person pending an investigation as to his or her competency, the date for the enforcement of the convicted person's sentence has passed, and the convicted person is found to be competent, the court shall certify that finding to the Supreme Court which shall appoint a day for the enforcement of the convicted person's sentence.

**Source:** Laws 1973, LB 268, § 23; Laws 2009, LB36, § 2; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2538 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

**29-2539 Commission members; mileage; payment.**

The members of the commission appointed pursuant to section 29-2537 shall each receive mileage at the rate authorized in section 81-1176 for state employees for each mile actually and necessarily traveled in reaching and returning from the place where the convicted person is confined and examined, and it is hereby made the duty of the commission to act in this capacity without compensation other than that already provided for them by law. All of the findings and orders aforesaid shall be entered in the district court records of the county wherein the convicted person was originally tried and sentenced, and the costs therefor, including those providing for the mileage of the members of the commission, shall be allowed and paid in the usual manner by the county in which the convicted person was tried and sentenced to death.

**Source:** Laws 1973, LB 268, § 24; Laws 1981, LB 204, § 44; Laws 2009, LB36, § 3; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2539 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

**29-2540 Female convicted person; pregnant; notice to judge; procedures.**

If a female convicted person under sentence of death shall appear to be pregnant, the Director of Correctional Services shall in like manner notify the judge of the district court of the county in which she was sentenced, who shall in all things proceed as in the case of an incompetent convicted person.

**Source:** Laws 1973, LB 268, § 25; Laws 1986, LB 1177, § 9; Laws 2009, LB36, § 4; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2540 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

**Cross References**

**Mentally incompetent convicts**, see sections 29-2537 to 29-2539.

**29-2541 Female convicted person; finding convicted person is pregnant; judge; duties; costs.**

If the commission appointed pursuant to section 29-2537 finds that the female convicted person is pregnant, the court shall suspend the execution of her sentence. At such time as it shall be determined that such woman is no longer pregnant, the judge shall appoint a date for her execution and issue a warrant directing the enforcement of the sentence of death which shall be delivered to the Director of Correctional Services. The costs and expenses thereof shall be the same as those provided for in the case of an incompetent convicted person and shall be paid in the same manner.

**Source:** Laws 1973, LB 268, § 26; Laws 1986, LB 1177, § 10; Laws 2009, LB36, § 5; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2541 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

**29-2542 Escaped convict; return; notify Supreme Court; fix date of execution.**

If any person who has been convicted of a crime punishable by death, and sentenced to death, shall escape, and shall not be retaken before the time fixed for his or her execution, it shall be lawful for the Director of Correctional Services, or any sheriff or other officer or person, to rearrest such person and return him or her to the custody of the director, who shall thereupon notify the Supreme Court that such person has been returned to custody. Upon receipt of that notice, the Supreme Court shall then issue a warrant, fixing a date for the enforcement of the sentence which shall be delivered to the director. The date of execution shall be set no later than sixty days following the issuance of the warrant.

**Source:** Laws 1973, LB 268, § 27; Laws 2009, LB36, § 6; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2542 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

**29-2543 Person convicted of crime sentenced to death; Supreme Court; warrant.**

(1) Whenever any person has been tried and convicted before any district court in this state, has been sentenced to death, and has had his or her sentence of death affirmed by the Supreme Court on mandatory direct review, it shall be the duty of the Supreme Court to issue a warrant, under the seal of the court, reciting therein the conviction and sentence and establishing a date for the enforcement of the sentence directed to the Director of Correctional Services, commanding him or her to proceed at the time named in the warrant. The date of execution shall be set no later than sixty days following the issuance of the warrant.

(2) Thereafter, if the initial execution date has been stayed and the original execution date has expired, the Supreme Court shall establish a new date for enforcement of the sentence upon receipt of notice from the Attorney General

that the stay of execution is no longer in effect and issue its warrant to the director. The date of execution shall be set no later than sixty days following the issuance of the warrant.

**Source:** Laws 1973, LB 268, § 28; Laws 1993, LB 31, § 12; Laws 2009, LB36, § 7; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2543 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

**29-2546 Reversal of judgment of conviction; delivery of convicted person to custody of sheriff; await further judgment and order of court.**

Whenever the Supreme Court reverses the judgment of conviction in accordance with which any convicted person has been sentenced to death and is confined in a Department of Correctional Services adult correctional facility as herein provided, it shall be the duty of the Director of Correctional Services, upon receipt of a copy of such judgment of reversal, duly certified by the clerk of the court and under the seal thereof, to forthwith deliver such convicted person into the custody of the sheriff of the county in which the conviction was had to be held in the jail of the county awaiting the further judgment and order of the court in the case.

**Source:** Laws 1973, LB 268, § 31; Laws 1993, LB 31, § 13; Laws 2009, LB36, § 8; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2546 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

## ARTICLE 28

### HABEAS CORPUS

#### Section

29-2801. Habeas corpus; writ; when allowed.

29-2811. Accessories before the fact in capital cases; not bailable.

**29-2801 Habeas corpus; writ; when allowed.**

If any person, except persons convicted of some crime or offense for which they stand committed, or persons committed for treason or felony, the punishment whereof is capital, plainly and specially expressed in the warrant of commitment, now is or shall be confined in any jail of this state, or shall be unlawfully deprived of his or her liberty, and shall make application, either by him or herself or by any person on his or her behalf, to any one of the judges of the district court, or to any county judge, and does at the same time produce to such judge a copy of the commitment or cause of detention of such person, or if the person so imprisoned or detained is imprisoned or detained without any legal authority, upon making the same appear to such judge, by oath or affirmation, it shall be his duty forthwith to allow a writ of habeas corpus, which writ shall be issued forthwith by the clerk of the district court, or by the county judge, as the case may require, under the seal of the court whereof the person allowing such writ is a judge, directed to the proper officer, person or persons who detains such prisoner.

**Source:** G.S.1873, c. 58, § 353, p. 804; R.S.1913, § 9247; C.S.1922, § 10276; C.S.1929, § 29-2801; R.S.1943, § 29-2801; Laws 2015, LB268, § 24; Referendum 2016, No. 426.

**Note:** The changes made to section 29-2801 by Laws 2015, LB 268, section 24, have been omitted because of the vote on the referendum at the November 2016 general election.

**29-2811 Accessories before the fact in capital cases; not bailable.**

When any person shall appear to be committed by any judge or magistrate, and charged as accessory before the fact to any felony, the punishment whereof is capital, which felony shall be plainly and especially charged in the warrant of commitment, such person shall not be removed or bailed by virtue of sections 29-2801 to 29-2824, or in any other manner than as if said sections had not been enacted.

**Source:** G.S.1873, c. 58, § 363, p. 806; R.S.1913, § 9257; C.S.1922, § 10286; C.S.1929, § 29-2811; R.S.1943, § 29-2811; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 29-2811 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

**ARTICLE 32****RENDITION OF PRISONERS AS WITNESSES**

Section  
29-3205. Sections; exceptions.

**29-3205 Sections; exceptions.**

Sections 29-3201 to 29-3210 do not apply to any person in this state confined as mentally ill or under sentence of death.

**Source:** Laws 1969, c. 229, § 5, p. 855; Laws 1986, LB 1177, § 11; Laws 2015, LB268, § 25; Referendum 2016, No. 426.

**Note:** The changes made to section 29-3205 by Laws 2015, LB 268, section 25, have been omitted because of the vote on the referendum at the November 2016 general election.

**ARTICLE 39****PUBLIC DEFENDERS AND APPOINTED COUNSEL**

## (c) COUNTY REVENUE ASSISTANCE ACT

Section  
29-3920. Legislative findings.  
29-3922. Terms, defined.  
29-3928. Chief counsel; qualifications; salary.  
29-3929. Chief counsel; duties.  
29-3930. Commission; divisions established.

## (c) COUNTY REVENUE ASSISTANCE ACT

**29-3920 Legislative findings.**

The Legislature finds that:

(1) County property owners should be given some relief from the obligation of providing mandated indigent defense services which in most instances are required because of state laws establishing crimes and penalties;

(2) Property tax relief can be accomplished if the state begins to assist the counties with the obligation of providing indigent defense services required by state laws establishing crimes and penalties;

(3) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also increase accountability because the state, which is the governmental entity responsible for

passing criminal statutes, will likewise be responsible for paying some of the costs;

(4) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also improve inconsistent and inadequate funding of indigent defense services by the counties;

(5) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also lessen the impact on county property taxpayers of the cost of a high profile death penalty case which can significantly affect the finances of the counties; and

(6) To accomplish property tax relief in the form of the state assisting the counties of Nebraska in providing for indigent defense services, the Commission on Public Advocacy Operations Cash Fund should be established to fund the operation of the Commission on Public Advocacy and to fund reimbursement requests as determined by section 29-3933.

**Source:** Laws 1995, LB 646, § 2; Laws 2002, LB 876, § 64; Laws 2003, LB 760, § 9; Laws 2015, LB268, § 26; Referendum 2016, No. 426.

**Note:** The changes made to section 29-3920 by Laws 2015, LB 268, section 26, have been omitted because of the vote on the referendum at the November 2016 general election.

### **29-3922 Terms, defined.**

For purposes of the County Revenue Assistance Act:

(1) Chief counsel means an attorney appointed to be the primary administrative officer of the commission pursuant to section 29-3928;

(2) Commission means the Commission on Public Advocacy;

(3) Commission staff means attorneys, investigators, and support staff who are performing work for the capital litigation division, appellate division, DNA testing division, and major case resource center;

(4) Contracting attorney means an attorney contracting to act as a public defender pursuant to sections 23-3404 to 23-3408;

(5) Court-appointed attorney means an attorney other than a contracting attorney or a public defender appointed by the court to represent an indigent person;

(6) Indigent defense services means legal services provided to indigent persons by an indigent defense system in capital cases, felony cases, misdemeanor cases, juvenile cases, mental health commitment cases, child support enforcement cases, and paternity establishment cases;

(7) Indigent defense system means a system of providing services, including any services necessary for litigating a case, by a contracting attorney, court-appointed attorney, or public defender;

(8) Indigent person means a person who is indigent and unable to obtain legal counsel as determined pursuant to subdivision (3) of section 29-3901; and

(9) Public defender means an attorney appointed or elected pursuant to sections 23-3401 to 23-3403.

**Source:** Laws 1995, LB 646, § 4; Laws 2001, LB 335, § 3; Laws 2001, LB 659, § 15; Laws 2009, LB154, § 2; Laws 2015, LB268, § 27; Referendum 2016, No. 426.

**Note:** The changes made to section 29-3922 by Laws 2015, LB 268, section 27, have been omitted because of the vote on the referendum at the November 2016 general election.

#### **29-3928 Chief counsel; qualifications; salary.**

The commission shall appoint a chief counsel. The responsibilities and duties of the chief counsel shall be defined by the commission and shall include the overall supervision of the workings of the various divisions of the commission. The chief counsel shall be qualified for his or her position, shall have been licensed to practice law in the State of Nebraska for at least five years prior to the effective date of the appointment, and shall be experienced in the practice of criminal defense, including the defense of capital cases. The chief counsel shall serve at the pleasure of the commission. The salary of the chief counsel shall be set by the commission.

**Source:** Laws 1995, LB 646, § 10; Laws 2015, LB268, § 28; Referendum 2016, No. 426.

**Note:** The changes made to section 29-3928 by Laws 2015, LB 268, section 28, have been omitted because of the vote on the referendum at the November 2016 general election.

#### **29-3929 Chief counsel; duties.**

The primary duties of the chief counsel shall be to provide direct legal services to indigent defendants, and the chief counsel shall:

- (1) Supervise the operations of the appellate division, the capital litigation division, the DNA testing division, and the major case resource center;
- (2) Prepare a budget and disburse funds for the operations of the commission;
- (3) Present to the commission an annual report on the operations of the commission, including an accounting of all funds received and disbursed, an evaluation of the cost-effectiveness of the commission, and recommendations for improvement;
- (4) Convene or contract for conferences and training seminars related to criminal defense;
- (5) Perform other duties as directed by the commission;
- (6) Establish and administer projects and programs for the operation of the commission;
- (7) Appoint and remove employees of the commission and delegate appropriate powers and duties to them;
- (8) Adopt and promulgate rules and regulations for the management and administration of policies of the commission and the conduct of employees of the commission;
- (9) Transmit monthly to the commission a report of the operations of the commission for the preceding calendar month;
- (10) Execute and carry out all contracts, leases, and agreements authorized by the commission with agencies of federal, state, or local government, corporations, or persons; and
- (11) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

**Source:** Laws 1995, LB 646, § 11; Laws 2001, LB 659, § 16; Laws 2015, LB268, § 29; Referendum 2016, No. 426.

**Note:** The changes made to section 29-3929 by Laws 2015, LB 268, section 29, have been omitted because of the vote on the referendum at the November 2016 general election.

**29-3930 Commission; divisions established.**

The following divisions are established within the commission:

- (1) The capital litigation division shall be available to assist in the defense of capital cases in Nebraska, subject to caseload standards of the commission;
- (2) The appellate division shall be available to prosecute appeals to the Court of Appeals and the Supreme Court, subject to caseload standards of the commission;
- (3) The violent crime and drug defense division shall be available to assist in the defense of certain violent and drug crimes as defined by the commission, subject to the caseload standards of the commission;
- (4) The DNA testing division shall be available to assist in representing persons who are indigent who have filed a motion pursuant to the DNA Testing Act, subject to caseload standards; and
- (5) The major case resource center shall be available to assist public defenders, contracting attorneys, or court-appointed attorneys with the defense of a felony offense, subject to caseload standards of the commission.

**Source:** Laws 1995, LB 646, § 12; Laws 2001, LB 659, § 17; Laws 2003, LB 760, § 11; Laws 2015, LB268, § 30; Referendum 2016, No. 426.

**Note:** The changes made to section 29-3930 by Laws 2015, LB 268, section 30, have been omitted because of the vote on the referendum at the November 2016 general election.

**Cross References**

**DNA Testing Act**, see section 29-4116.

**ARTICLE 41  
DNA TESTING**

(a) DNA IDENTIFICATION INFORMATION ACT

Section

29-4115.01. State DNA Sample and Data Base Fund; created; use; investment.

(a) DNA IDENTIFICATION INFORMATION ACT

**29-4115.01 State DNA Sample and Data Base Fund; created; use; investment.**

The State DNA Sample and Data Base Fund is created. The fund shall be maintained by the Nebraska State Patrol and administered by the Superintendent of Law Enforcement and Public Safety. The fund shall consist of any funds transferred to the fund by the Legislature or made available by any department or agency of the United States Government if so directed by such department or agency. The fund shall be used to pay the expenses of the Department of Correctional Services and the Nebraska State Patrol as needed to collect DNA samples as provided in section 29-4106. 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 2010, LB190, § 6; Laws 2017, LB331, § 21.  
Effective date May 16, 2017.



**DNA TESTING**

**§ 29-4115.01**

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.



## CHAPTER 30

### DECEDENTS' ESTATES; PROTECTION OF PERSONS AND PROPERTY

Article.

- 23. Intestate Succession and Wills.
  - Part 5—Wills. 30-2333.
  - Part 8—General Provisions. 30-2353.
- 24. Probate of Wills and Administration.
  - Part 8—Creditors' Claims. 30-2483.
- 26. Protection of Persons under Disability and Their Property.
  - Part 1—General Provisions. 30-2602.02.
  - Part 4—Protection of Property of Persons under Disability and Minors. 30-2640.
- 27. Nonprobate Transfers.
  - Part 1—Provisions Relating to Effect of Death. 30-2715, 30-2715.01.
  - Part 3—Uniform TOD Security Registration. 30-2734, 30-2742.
- 38. Nebraska Uniform Trust Code.
  - Part 6—Revocable Trusts. 30-3854.
  - Part 8—Duties and Powers of Trustee. 30-3880 to 30-3882.

#### ARTICLE 23

#### INTESTATE SUCCESSION AND WILLS

##### PART 5—WILLS

Section

- 30-2333. Revocation by divorce or annulment; no revocation by other changes of circumstances.

##### PART 8—GENERAL PROVISIONS

- 30-2353. Effect of divorce, annulment, and decree of separation.

##### PART 5—WILLS

#### **30-2333 Revocation by divorce or annulment; no revocation by other changes of circumstances.**

(a) For purposes of this section:

(1) Beneficiary, as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; and as it relates to a beneficiary of a beneficiary designation, refers to a beneficiary of an insurance or annuity policy, of an account with POD designation as defined in section 30-2716, of a security registered in beneficiary form, of a pension, profit-sharing, retirement, or similar benefit plan, or of any other nonprobate transfer at death;

(2) Beneficiary designated in a governing instrument includes a grantee of a deed, a beneficiary of a transfer on death deed, a transfer-on-death beneficiary, a beneficiary of a POD designation, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power

of appointment, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised;

(3) Disposition or appointment of property includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument;

(4) Divorce or annulment means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 30-2353. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section;

(5) Divorced individual includes an individual whose marriage has been annulled;

(6) Governing instrument means a deed, a will, a trust, an insurance or annuity policy, an account with POD designation, a security registered in beneficiary form, a transfer on death deed, a pension, profit-sharing, retirement, or similar benefit plan, an instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type, which is executed by the divorced individual before the divorce or annulment of his or her marriage to his or her former spouse;

(7) Joint tenants with the right of survivorship and community property with the right of survivorship includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution;

(8) Payor means a trustee, an insurer, a business entity, an employer, a government, a governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments;

(9) Relative of the divorced individual's former spouse means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity; and

(10) Revocable, with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of his or her former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate himself or herself in place of his or her former spouse or in place of his or her former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(b) For purposes of this section, subject to subsection (c) of this section, a person has knowledge of a fact if the person:

(1) Has actual knowledge of it;

(2) Has received a notice or notification of it; or

(3) From all the facts and circumstances known to the person at the time in question, has reason to know it.

(c) An organization that conducts activities through employees has notice or knowledge of a fact only from the time the information was received by an employee having responsibility to act for the organization, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the organization and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the organization would be materially affected by the information.

(d) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(1) Revokes any revocable

(A) disposition or appointment of property made by a divorced individual to his or her former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(B) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(C) nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

(2) Severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into equal tenancies in common.

(e) A severance under subdivision (d)(2) of this section does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(f) Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the divorced individual's former spouse died immediately before the divorce or annulment.

(g) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(h) No change of circumstances other than as described in this section and section 30-2354 effects a revocation.

(i)(1)(A) Except as provided in subdivision (i)(1)(B) of this section, a payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of or has knowledge of the divorce, annulment, or remarriage.

(B) Liability of a payor or other third party which is a financial institution making payment on a jointly owned account or to a beneficiary pursuant to the terms of a governing instrument on an account with a POD designation shall be governed by section 30-2732.

(C) A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture, severance, or revocation under this section.

(2) Written notice of the divorce, annulment, or remarriage under subdivision (i)(1)(A) of this section must be mailed to the payor's or other third party's main office or home, be personally delivered to the payor or other third party, or, in the case of written notice to a person other than a financial institution, be delivered by such other means which establish that the person has knowledge of the divorce, annulment, or remarriage. Written notice to a financial institution with respect to a jointly owned account or an account with a POD designation shall be governed by section 30-2732.

(3) Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court that has jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court that has jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(j)(1) A person who purchases property from a former spouse, a relative of a former spouse, or any other person for value and without notice, or who receives from a former spouse, a relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a former spouse, relative of a former spouse, or other person who, not for value, received a payment, an item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, a relative of a former spouse, or any other person

who, not for value, received a payment, an item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

(k) If a former spouse has notice of the fact that he or she is a former spouse, then any receipt of property or money to which this section applies is received by the former spouse as a trustee for the person or persons who would be entitled to that property under this section.

**Source:** Laws 1974, LB 354, § 55, UPC § 2-508; Laws 2017, LB517, § 1. Effective date August 24, 2017.

PART 8—GENERAL PROVISIONS

**30-2353 Effect of divorce, annulment, and decree of separation.**

(a) An individual who is divorced from the decedent or whose marriage to the decedent has been dissolved or annulled by a decree that has become final is not a surviving spouse unless, by virtue of a subsequent marriage, he or she is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

(b) For purposes of parts 1, 2, 3, and 4 of this article and of section 30-2412, a surviving spouse does not include:

(1) an individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment or dissolution of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as man and wife;

(2) an individual who, following an invalid decree or judgment of divorce or annulment or dissolution of marriage obtained by the decedent, participates in a marriage ceremony with a third individual; or

(3) an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights against the decedent.

**Source:** Laws 1974, LB 354, § 75, UPC § 2-802; Laws 2017, LB517, § 2. Effective date August 24, 2017.

ARTICLE 24

PROBATE OF WILLS AND ADMINISTRATION

PART 8—CREDITORS' CLAIMS

Section  
30-2483. Notice to creditors.

PART 8—CREDITORS' CLAIMS

**30-2483 Notice to creditors.**

(a) Unless notice has already been given under this article and except when an appointment of a personal representative is made pursuant to subdivision (4) of section 30-2408, the clerk of the court upon the appointment of a personal

representative shall publish a notice once a week for three successive weeks in a newspaper of general circulation in the county announcing the appointment and the address of the personal representative, and notifying creditors of the estate to present their claims within two months after the date of the first publication of the notice or be forever barred. The first publication shall be made within thirty days after the appointment. The party instituting or maintaining the proceeding or his or her attorney is required to mail the published notice and give proof thereof in accordance with section 25-520.01.

(b) If the decedent was fifty-five years of age or older or resided in a medical institution as defined in subsection (1) of section 68-919, the notice shall also be provided to the Department of Health and Human Services with the decedent's social security number and, if the decedent was predeceased by a spouse, the name and social security number of such spouse. The notice shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivering notice on its web site. Any notice that fails to conform with such manner is void and constitutes neither notice to the department nor a waiver application for purposes of any statute or regulation that requires that a notice or waiver application be provided to the department.

**Source:** Laws 1974, LB 354, § 161, UPC § 3-801; Laws 1978, LB 650, § 18; Laws 2008, LB928, § 1; Laws 2017, LB268, § 3.  
Effective date August 24, 2017.

**ARTICLE 26**

**PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY**

PART 1—GENERAL PROVISIONS

Section

30-2602.02. Guardian or conservator; national criminal history record check; report; waiver by court.

PART 4—PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

30-2640. Bond.

PART 1—GENERAL PROVISIONS

**30-2602.02 Guardian or conservator; national criminal history record check; report; waiver by court.**

(1) A person, except for a financial institution as that term is defined in section 8-101.03 or its officers, directors, employees, or agents or a trust company, who has been nominated for appointment as a guardian or conservator shall obtain a national criminal history record check through a process approved by the State Court Administrator and a report of the results and file such report with the court at least ten days prior to the appointment hearing date, unless waived or modified by the court (a) for good cause shown by affidavit filed simultaneously with the petition for appointment or (b) in the event the protected person requests an expedited hearing under section 30-2630.01.

(2) An order appointing a guardian or conservator shall not be signed by the judge until such report has been filed with the court and reviewed by the judge.



Such report, or the lack thereof, shall be certified either by affidavit or by obtaining a certified copy of the report. No report or national criminal history record check shall be required by the court upon the application of a petitioner for an emergency temporary guardianship or emergency temporary conservatorship. The court may waive the requirements of this section for good cause shown.

**Source:** Laws 2011, LB157, § 34; Laws 2017, LB140, § 151.  
Operative date August 24, 2017.

PART 4—PROTECTION OF PROPERTY OF PERSONS  
UNDER DISABILITY AND MINORS

**30-2640 Bond.**

For estates with a net value of more than ten thousand dollars, the bond for a conservator shall be in the amount of the aggregate capital value of the personal property of the estate in the conservator’s control plus one year’s estimated income from all sources minus the value of securities and other assets deposited under arrangements requiring an order of the court for their removal. The bond of the conservator shall be conditioned upon the faithful discharge of all duties of the trust according to law, with sureties as the court shall specify. The court, in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land owned by the conservator. For good cause shown, the court may eliminate the requirement of a bond or decrease or increase the required amount of any such bond previously furnished. The court shall not require a bond if the protected person executed a written, valid power of attorney that specifically nominates a guardian or conservator and specifically does not require a bond. The court shall consider as one of the factors of good cause, when determining whether a bond should be required and the amount thereof, the protected person’s choice of any attorney in fact or alternative attorney in fact. No bond shall be required of any financial institution, as that term is defined in section 8-101.03, or any officer, director, employee, or agent of the financial institution serving as a conservator, or any trust company serving as a conservator. The Public Guardian shall not be required to post bond.

**Source:** Laws 1974, LB 354, § 258, UPC § 5-411; Laws 1985, LB 292, § 4; Laws 2011, LB157, § 43; Laws 2014, LB920, § 26; Laws 2017, LB140, § 152.  
Operative date August 24, 2017.

**ARTICLE 27**

**NONPROBATE TRANSFERS**

PART 1—PROVISIONS RELATING TO EFFECT OF DEATH

- Section
- 30-2715. Nonprobate transfers on death.
- 30-2715.01. Motor vehicle; transfer on death; certificate of title.

PART 3—UNIFORM TOD SECURITY REGISTRATION

- 30-2734. Definitions.
- 30-2742. Nontestamentary transfer on death.

## PART 1—PROVISIONS RELATING TO EFFECT OF DEATH

**30-2715 Nonprobate transfers on death.**

(a) Subject to sections 30-2333 and 30-2354, a provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, marital property agreement, certificate of title, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(1) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later;

(2) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(3) any property controlled by or owned by the decedent before death which is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

(b) This section does not limit rights of creditors under other laws of this state.

**Source:** Laws 1993, LB 250, § 1; Laws 2010, LB712, § 24; Laws 2017, LB517, § 3.

Effective date August 24, 2017.

**30-2715.01 Motor vehicle; transfer on death; certificate of title.**

(1) Subject to section 30-2333, a person who owns a motor vehicle may provide for the transfer of such vehicle upon his or her death or the death of the last survivor of a joint tenancy with right of survivorship by including in the certificate of title a designation of beneficiary or beneficiaries to whom the vehicle will be transferred on the death of the owner or the last survivor, subject to the rights of all lienholders, whether created before, simultaneously with, or after the creation of the transfer-on-death interest. A trust may be the beneficiary of a transfer-on-death certificate of title. The certificate of title shall include the name of the owner, the name of any tenant-in-common owner or the name of any joint-tenant-with-right-of-survivorship owner, followed in substance by the words transfer on death to (name of beneficiary or beneficiaries or name of trustee if a trust is to be the beneficiary). The abbreviation TOD may be used instead of the words transfer on death to.

(2) A transfer-on-death beneficiary shall have no interest in the motor vehicle until the death of the owner or the last survivor of the joint-tenant-with-right-of-survivorship owners. A beneficiary designation may be changed at any time by the owner or by the joint-tenant-with-right-of-survivorship owners then surviving without the consent of any beneficiary by filing an application for a subsequent certificate of title.

(3) Ownership of a motor vehicle which has a designation of beneficiary as provided in subsection (1) of this section and for which an application for a subsequent certificate of title has not been filed shall vest in the designated beneficiary or beneficiaries on the death of the owner or the last of the joint-tenant-with-right-of-survivorship owners, subject to the rights of all lienholders.

**Source:** Laws 2010, LB712, § 23; Laws 2017, LB517, § 4.

Effective date August 24, 2017.

### PART 3—UNIFORM TOD SECURITY REGISTRATION

#### **30-2734 Definitions.**

In sections 30-2734 to 30-2745:

(1) Beneficiary form means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) Business means a corporation, partnership, limited liability company, limited partnership, limited liability partnership, or any other legal or commercial entity.

(3) Register, including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(4) Registering entity means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(5) Security means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(6) Security account means (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, (ii) an investment management or custody account with a trust company or a trust department of a bank with trust powers, including the securities in the account, a cash balance in the account, and cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death, or (iii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(7) The words transfer on death or the abbreviation TOD and the words pay on death or the abbreviation POD are used without regard for whether the subject is a money claim against an insurer, such as its own note or bond for money loaned, or is a claim to securities evidenced by conventional title documentation.

**Source:** Laws 1993, LB 250, § 20; Laws 2004, LB 999, § 23; Laws 2017, LB138, § 1.

Effective date May 11, 2017.

#### **30-2742 Nontestamentary transfer on death.**

(a) Subject to section 30-2333, a transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and sections 30-2734 to 30-2745 and is not testamentary.

(b) Sections 30-2734 to 30-2745 do not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

**Source:** Laws 1993, LB 250, § 28; Laws 2017, LB517, § 5.  
Effective date August 24, 2017.

## ARTICLE 38

### NEBRASKA UNIFORM TRUST CODE

#### PART 6—REVOCABLE TRUSTS

Section

30-3854. (UTC 602) Revocation or amendment of revocable trust.

#### PART 8—DUTIES AND POWERS OF TRUSTEE

30-3880. (UTC 815) General powers of trustee; medical assistance reimbursement claim; how treated.

30-3881. (UTC 816) Specific powers of trustee; medical assistance reimbursement claim; how treated.

30-3882. (UTC 817) Distribution upon termination; medical assistance reimbursement claim; how treated.

#### PART 6—REVOCABLE TRUSTS

#### **30-3854 (UTC 602) Revocation or amendment of revocable trust.**

(UTC 602) (a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before January 1, 2005.

(b) If a revocable trust is created or funded by more than one settlor:

(1) to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and

(3) upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(c) The settlor may revoke or amend a written revocable trust:

(1) by substantial compliance with a method provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) an instrument evidencing an intent to amend or revoke the trust signed by the settlor, or in the settlor's name by some other individual in the presence of and by the direction of the settlor. The instrument must have an indication of the date of the writing or signing and, in the absence of such indication of the date, be the only such writing or contain no inconsistency with any other like writing or permit determination of such date of writing or signing from the content of such writing, from extrinsic circumstances, or from any other evidence.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(e) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

(f) A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

(g) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken in reliance on the terms of the trust.

(h) The revocation, amendment, and distribution of trust property of a trust pursuant to this section is subject to section 30-2333.

**Source:** Laws 2003, LB 130, § 54; Laws 2004, LB 999, § 26; Laws 2017, LB517, § 6.  
Effective date August 24, 2017.

#### PART 8—DUTIES AND POWERS OF TRUSTEE

### **30-3880 (UTC 815) General powers of trustee; medical assistance reimbursement claim; how treated.**

(UTC 815) (a) A trustee, without authorization by the court, may exercise:

- (1) powers conferred by the terms of the trust; and
- (2) except as limited by the terms of the trust:

(A) all powers over the trust property which an unmarried competent owner has over individually owned property;

(B) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

(C) any other powers conferred by the Nebraska Uniform Trust Code.

(b) The exercise of a power is subject to the fiduciary duties prescribed by sections 30-3866 to 30-3882.

(c) After the death of the trustor occurring after August 30, 2015, a trustee of a revocable trust which has become irrevocable by reason of the death of the trustor shall not transfer trust property to a beneficiary described in section 77-2004 or 77-2005 in relation to the trustor prior to satisfaction of all claims for medical assistance reimbursement pursuant to section 68-919 to the extent necessary to discharge any such claim remaining unpaid after application of the assets of the trustor's probate estate. The Department of Health and Human Services may, upon application of a trustee, waive the restriction on transfers established by this subsection in cases in which the department determines that

either there is no medical assistance reimbursement due or after the proposed transfer is made there will be sufficient assets remaining in the trust or trustor's probate estate to satisfy all such claims for medical assistance reimbursement. If there is no medical assistance reimbursement due, the department shall waive the restriction within sixty days after receipt of the trustee's request for waiver and the deceased trustor's name and social security number and, if the trustor was predeceased by a spouse, the name and social security number of such spouse. A trustee who is a financial institution as defined in section 77-3801, a trust company chartered pursuant to the Nebraska Trust Company Act, or an attorney licensed to practice in this state may distribute assets from the trust prior to the receipt of the waiver from the department if the trustee signs a recital under oath that states the decedent's name and social security number and, if the decedent was predeceased by a spouse, the name and social security number of such spouse, and that the trustor was not a recipient of medical assistance and no claims for medical assistance exist under section 68-919. The trustee shall send such recital to the department. A trustee who makes such a recital knowing the recital is false becomes personally liable for medical assistance reimbursement pursuant to section 68-919 to the extent of the assets distributed from the trust necessary to discharge any such claim remaining unpaid after application of the assets of the transferor's probate estate. The request for waiver and the recital described in this subsection shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivery on its web site. Any request for waiver or recital that fails to conform with such manner is void.

**Source:** Laws 2003, LB 130, § 80; Laws 2015, LB72, § 1; Laws 2017, LB268, § 4.

Effective date August 24, 2017.

**Cross References**

Nebraska Trust Company Act, see section 8-201.01.

**30-3881 (UTC 816) Specific powers of trustee; medical assistance reimbursement claim; how treated.**

(UTC 816) (a) Without limiting the authority conferred by section 30-3880, a trustee may:

- (1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;
- (2) acquire or sell property, for cash or on credit, at public or private sale;
- (3) exchange, partition, or otherwise change the character of trust property;
- (4) deposit trust money in an account in a regulated financial-service institution;
- (5) borrow money, including from the trustee, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;
- (6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merg-

ing, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

(A) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(B) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(C) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

(D) deposit the securities with a depository or other regulated financial-service institution;

(8) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) with respect to possible liability for violation of environmental law:

(A) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(B) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(C) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(D) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(E) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(16) exercise elections with respect to federal, state, and local taxes;

(17) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(19) pledge trust property to guarantee loans made by others to the beneficiary;

(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(A) paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(B) paying it to the beneficiary's custodian under the Nebraska Uniform Transfers to Minors Act or custodial trustee under the Nebraska Uniform Custodial Trust Act, and, for that purpose, creating a custodianship or custodial trust;

(C) if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(D) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and



(26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

(b) After the death of the trustor occurring after August 30, 2015, a trustee of a revocable trust which has become irrevocable by reason of the death of the trustor shall not transfer trust property to a beneficiary described in section 77-2004 or 77-2005 in relation to the trustor prior to satisfaction of all claims for medical assistance reimbursement pursuant to section 68-919 to the extent necessary to discharge any such claim remaining unpaid after application of the assets of the trustor's probate estate. The Department of Health and Human Services may, upon application of a trustee, waive the restriction on transfers established by this subsection in cases in which the department determines that either there is no medical assistance reimbursement due or after the proposed transfer is made there will be sufficient assets remaining in the trust or trustor's probate estate to satisfy all such claims for medical assistance reimbursement. If there is no medical assistance reimbursement due, the department shall waive the restriction within sixty days after receipt of the trustee's request for waiver and the deceased trustor's name and social security number and, if the trustor was predeceased by a spouse, the name and social security number of such spouse. A trustee who is a financial institution as defined in section 77-3801, a trust company chartered pursuant to the Nebraska Trust Company Act, or an attorney licensed to practice in this state may distribute assets from the trust prior to the receipt of the waiver from the department if the trustee signs a recital under oath that states the decedent's name and social security number and, if the decedent was predeceased by a spouse, the name and social security number of such spouse, and that the trustor was not a recipient of medical assistance and no claims for medical assistance exist under section 68-919. The trustee shall send such recital to the department. A trustee who makes such a recital knowing the recital is false becomes personally liable for medical assistance reimbursement pursuant to section 68-919 to the extent of the assets distributed from the trust necessary to discharge any such claim remaining unpaid after application of the assets of the transferor's probate estate. The request for waiver and the recital described in this subsection shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivery on its web site. Any request for waiver or recital that fails to conform with such manner is void.

**Source:** Laws 2003, LB 130, § 81; Laws 2015, LB72, § 2; Laws 2017, LB268, § 5.

Effective date August 24, 2017.

**Cross References**

**Nebraska Trust Company Act**, see section 8-201.01.

**Nebraska Uniform Custodial Trust Act**, see section 30-3501.

**Nebraska Uniform Transfers to Minors Act**, see section 43-2701.

**30-3882 (UTC 817) Distribution upon termination; medical assistance reimbursement claim; how treated.**

(UTC 817) (a) Except as limited in subsection (d) of this section, upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the

trustee of an objection within thirty days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(b) Except as limited in subsection (d) of this section, upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

- (1) it was induced by improper conduct of the trustee; or
- (2) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

(d) After the death of the trustor occurring after August 30, 2015, a trustee of a revocable trust which has become irrevocable by reason of the death of the trustor shall not transfer trust property to a beneficiary described in section 77-2004 or 77-2005 in relation to the trustor prior to satisfaction of all claims for medical assistance reimbursement pursuant to section 68-919 to the extent necessary to discharge any such claim remaining unpaid after application of the assets of the trustor's probate estate. The Department of Health and Human Services may, upon application of a trustee, waive the restriction on transfers established by this subsection in cases in which the department determines that either there is no medical assistance reimbursement due or after the proposed transfer is made there will be sufficient assets remaining in the trust or trustor's probate estate to satisfy all such claims for medical assistance reimbursement. If there is no medical assistance reimbursement due, the department shall waive the restriction within sixty days after receipt of the trustee's request for waiver and the deceased trustor's name and social security number and, if the trustor was predeceased by a spouse, the name and social security number of such spouse. A trustee who is a financial institution as defined in section 77-3801, a trust company chartered pursuant to the Nebraska Trust Company Act, or an attorney licensed to practice in this state may distribute assets from the trust prior to the receipt of the waiver from the department if the trustee signs a recital under oath that states the decedent's name and social security number and, if the decedent was predeceased by a spouse, the name and social security number of such spouse, and that the trustor was not a recipient of medical assistance and no claims for medical assistance exist under section 68-919. The trustee shall send such recital to the department. A trustee who makes such a recital knowing the recital is false becomes personally liable for medical assistance reimbursement pursuant to section 68-919 to the extent of the assets distributed from the trust necessary to discharge any such claim remaining unpaid after application of the assets of the transferor's probate estate. The request for waiver and the recital described in this subsection shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivery on its web site. Any request for waiver or recital that fails to conform with such manner is void.

**Source:** Laws 2003, LB 130, § 82; Laws 2015, LB72, § 3; Laws 2017, LB268, § 6.

Effective date August 24, 2017.

Cross References

Nebraska Trust Company Act, see section 8-201.01.



## CHAPTER 31

### DRAINAGE

Article.

- 5. Sanitary Drainage Districts in Municipalities. 31-501, 31-508.
- 9. County Drainage Act. 31-925.

#### ARTICLE 5

#### SANITARY DRAINAGE DISTRICTS IN MUNICIPALITIES

Section

- 31-501. Sanitary drainage district in municipality; organization; petition for election.
- 31-508. Ditches constructed from cities of 100,000 to 300,000 population; improvement beyond the district; plan and estimate; duty of Department of Natural Resources.

#### **31-501 Sanitary drainage district in municipality; organization; petition for election.**

Whenever one or more municipalities may be situated upon or near a stream which is bordered by lands subject to overflow from natural causes, or which is obstructed by dams or artificial obstructions so that the natural flow of waters is impeded so that drainage or the improvement of the channel of the stream will conduce to the preservation of public health, such municipalities and the surrounding lands deleteriously affected by the conditions of the stream, may be incorporated as a sanitary drainage district under sections 31-501 to 31-523 in the manner following: Any one hundred legal voters, residents within the limits of such proposed sanitary drainage district, may petition the county board of the county wherein they reside to cause the question to be submitted to the legal voters within the limits of such proposed sanitary drainage district whether they will organize as a sanitary drainage district under such sections. In the case of municipalities of less than one thousand inhabitants, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, two-thirds of the legal voters, residents within the limits of such proposed sanitary drainage district, may petition the county board of the county wherein they reside to cause the question to be submitted to the legal voters within the limits of such proposed sanitary drainage district whether they will organize as a sanitary drainage district under such sections, and if a majority of those voting on the question are in favor of the proposition the district shall be organized.

**Source:** Laws 1891, c. 36, § 1, p. 287; R.S.1913, § 1922; Laws 1919, c. 142, § 1, p. 320; C.S.1922, § 1863; C.S.1929, § 31-601; R.S.1943, § 31-501; Laws 2017, LB113, § 35.  
Effective date August 24, 2017.

#### **31-508 Ditches constructed from cities of 100,000 to 300,000 population; improvement beyond the district; plan and estimate; duty of Department of Natural Resources.**

If a sanitary drainage district has constructed one or more channels, drains, or ditches from a city having a population of more than one hundred thousand and less than three hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census to or beyond the boundaries of the district downstream and there remains from the lower terminus of such improvement a portion or continuation of the watercourse unimproved, the Department of Natural Resources shall investigate the conditions of such watercourse, and if the department determines that further improvement in such watercourse downstream is for the interest of lands adjacent to such watercourse below the point of the improvement, the department shall file a plan of such improvement in the office of the county clerk of each of the counties in which any of the lands to be benefited are situated and in which any portion of the watercourse to be improved is located. Such plan shall describe the boundaries of the district to be benefited and shall contain an estimate of the benefits that would accrue to the sanitary district by reason of such improvement as well as the cost thereof and an estimate of the special benefits that would accrue to lands adjacent to the watercourse by reason of improved drainage, such estimate being detailed as to the various tracts of land under separate ownership as shown by the records of the county in which such lands are situated.

**Source:** Laws 1927, c. 144, § 1, p. 390; C.S.1929, § 31-607; R.S.1943, § 31-508; Laws 1949, c. 81, § 2, p. 214; Laws 1969, c. 248, § 1, p. 906; Laws 2000, LB 900, § 71; Laws 2017, LB113, § 36.  
Effective date August 24, 2017.

## ARTICLE 9

### COUNTY DRAINAGE ACT

#### Section

31-925. Cleaning project; ditch or watercourse; state highway; contract with Department of Transportation.

#### **31-925 Cleaning project; ditch or watercourse; state highway; contract with Department of Transportation.**

Where the cleaning of a ditch or watercourse involves a state highway, the county board is authorized to make any contract with the Department of Transportation with reference to bridges or culverts or, if unable to agree therein, to bring any action necessary to force the state to participate in such improvement.

**Source:** Laws 1959, c. 132, § 25, p. 492; Laws 2017, LB339, § 82.  
Operative date July 1, 2017.

## CHAPTER 32 ELECTIONS

### Article.

2. Election Officials.
  - (a) Secretary of State. 32-204.
  - (b) County Election Officials. 32-208.
3. Registration of Voters. 32-301 to 32-312.
4. Time of Elections. 32-404.
5. Officers and Issues.
  - (a) Offices and Officeholders. 32-538, 32-539.
  - (c) Vacancies. 32-566, 32-573.
6. Filing and Nomination Procedures. 32-601 to 32-610.
8. Notice, Publication, and Printing of Ballots. 32-802.
9. Voting and Election Procedures. 32-915 to 32-947.

### ARTICLE 2

#### ELECTION OFFICIALS

##### (a) SECRETARY OF STATE

#### Section

32-204. Election Administration Fund; created; use; investment.

##### (b) COUNTY ELECTION OFFICIALS

32-208. Election commissioner; qualifications; appointment to elective office; effect.

##### (a) SECRETARY OF STATE

#### **32-204 Election Administration Fund; created; use; investment.**

The Election Administration Fund is hereby created. The fund shall consist of federal funds, state funds, gifts, and grants appropriated for the administration of elections. The Secretary of State shall use the fund for voting systems, provisional voting, computerized statewide voter registration lists, voter registration, training or informational materials related to elections, and any other costs related to elections. 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. The State Treasurer shall transfer any funds in the Carbon Sequestration Assessment Cash Fund on August 24, 2017, to the Election Administration Fund.

**Source:** Laws 1994, LB 76, § 24; Laws 1995, LB 7, § 29; Laws 1997, LB 764, § 13; Laws 2003, LB 14, § 1; Laws 2014, LB661, § 2; Laws 2017, LB644, § 3.

Effective date August 24, 2017.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

##### (b) COUNTY ELECTION OFFICIALS

**32-208 Election commissioner; qualifications; appointment to elective office; effect.**

The election commissioner in counties having a population of more than one hundred thousand inhabitants shall be a registered voter, a resident of such county for at least one year, and of good moral character and integrity and capacity. No person who is a candidate for any elective office or is a deputy, clerk, or employee of any person who is a candidate for any elective office shall be eligible for the office of election commissioner. The election commissioner shall not hold any other elective office or become a candidate for an elective office during his or her term of office. An election commissioner may be appointed to an elective office during his or her term of office as election commissioner, and acceptance of such appointment shall be deemed to be his or her resignation from the office of election commissioner.

**Source:** Laws 1994, LB 76, § 28; Laws 1997, LB 764, § 14; Laws 2001, LB 226, § 1; Laws 2003, LB 707, § 1; Laws 2011, LB449, § 1; Laws 2015, LB575, § 6; Laws 2017, LB451, § 2.  
Effective date August 24, 2017.

### ARTICLE 3

#### REGISTRATION OF VOTERS

##### Section

- 32-301. Registration list; registration of electors; registration records; how kept; use on election day.
- 32-304. Registration of electors electronically; application process; application; contents; Secretary of State; Department of Motor Vehicles; duties.
- 32-312. Registration application; contents.

##### **32-301 Registration list; registration of electors; registration records; how kept; use on election day.**

(1) The Secretary of State shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the office of the Secretary of State that contains the name and registration information of every legally registered voter in the state and assigns a unique identifier to each legally registered voter in the state. The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the state and shall comprise the voter registration register. The computerized list shall be coordinated with other agency data bases within the state and shall be available for electronic access by election commissioners and county clerks. The computerized list shall serve as the official voter registration list for the conduct of all elections under the Election Act. The Secretary of State shall provide such support as may be required so that election commissioners and county clerks are able to electronically enter voter registration information obtained by such officials on an expedited basis at the time the information is received. The Secretary of State shall provide adequate technological security measures to prevent unauthorized access to the computerized list.

(2) The election commissioner or county clerk shall provide for the registration of the electors of the county. Upon receipt of a voter registration application in his or her office from an eligible elector, the election commissioner or county clerk shall enter the information from the application in the voter registration register and may create an electronic image, photograph, micro-photograph, or reproduction in an electronic digital format to be used as the



voter registration record. The election commissioner or county clerk shall provide a precinct list of registered voters for each precinct for the use of judges and clerks of election in their respective precincts on election day. An electronically prepared list of registered voters in a form prescribed by the Secretary of State shall meet the requirements for a precinct list of registered voters.

**Source:** Laws 1994, LB 76, § 63; Laws 1999, LB 234, § 1; Laws 2003, LB 357, § 5; Laws 2005, LB 566, § 5; Laws 2017, LB451, § 3.  
Effective date August 24, 2017.

**32-304 Registration of electors electronically; application process; application; contents; Secretary of State; Department of Motor Vehicles; duties.**

(1) The Secretary of State in conjunction with the Department of Motor Vehicles shall, on or before September 1, 2015, develop and implement a registration application process which may be used statewide to register to vote and update voter registration records electronically using the Secretary of State's web site. An applicant who has a valid Nebraska motor vehicle operator's license or state identification card may use the application process to register to vote or to update his or her voter registration record with changes in his or her personal information or other information related to his or her eligibility to vote. For each electronic application, the Secretary of State shall obtain a copy of the electronic representation of the applicant's signature from the Department of Motor Vehicles' records of his or her motor vehicle operator's license or state identification card for purposes of voter registration.

(2) The application shall contain substantially all the information provided in section 32-312 and the following informational statements:

(a) An applicant who submits this application electronically is affirming that the information in the application is true. Any applicant who submits this application electronically knowing that any of the information in the application is false shall be guilty of a Class IV felony under section 32-1502 of the statutes of Nebraska. The penalty for a Class IV felony is up to two years imprisonment and twelve months post-release supervision, a fine of up to ten thousand dollars, or both;

(b) An applicant who submits this application electronically is agreeing to the use of his or her signature from the Department of Motor Vehicles' records of his or her motor vehicle operator's license or state identification card for purposes of voter registration;

(c) To vote at the polling place on election day, the completed application must be submitted on or before the third Friday before the election; and

(d) The election commissioner or county clerk will, upon receipt of the application for registration, send an acknowledgment of registration to the applicant indicating whether the application is proper or not.

**Source:** Laws 2014, LB661, § 3; Laws 2015, LB575, § 9; Laws 2017, LB451, § 4.  
Effective date August 24, 2017.

**32-312 Registration application; contents.**

The registration application prescribed by the Secretary of State pursuant to section 32-304 or 32-311.01 shall provide the instructional statements and request the information from the applicant as provided in this section.

**CITIZENSHIP**—“Are you a citizen of the United States of America?” with boxes to check to indicate whether the applicant is or is not a citizen of the United States.

**AGE**—“Are you at least eighteen years of age or will you be eighteen years of age on or before the first Tuesday following the first Monday of November of this year?” with boxes to check to indicate whether or not the applicant will be eighteen years of age or older on election day.

**WARNING**—“If you checked ‘no’ in response to either of these questions, do not complete this application.”

**NAME**—the name of the applicant giving the first and last name in full, the middle name in full or the middle initial, and the maiden name of the applicant, if applicable.

**RESIDENCE**—the name and number of the street, avenue, or other location of the dwelling where the applicant resides if there is a number. If the registrant resides in a hotel, apartment, tenement house, or institution, such additional information shall be included as will give the exact location of such registrant’s place of residence. If the registrant lives in an incorporated or unincorporated area not identified by the use of roads, road names, or house numbers, the registrant shall state the section, township, and range of his or her residence and the corporate name of the school district as described in section 79-405 in which he or she is located.

**POSTAL ADDRESS**—the address at which the applicant receives mail if different from the residence address.

**ADDRESS OF LAST REGISTRATION**—the name and number of the street, avenue, or other location of the dwelling from which the applicant last registered.

**TELEPHONE NUMBERS**—the telephone number of the applicant at work and at home. At the request of the applicant, a designation shall be made that the telephone number is an unlisted number, and such designation shall preclude the listing of the applicant’s telephone number on any list of voter registrations.

**EMAIL ADDRESS**—an email address of the applicant. At the request of the applicant, a designation shall be made that the email address is private, and such designation shall preclude the listing of the applicant’s email address on any list of voter registrations.

**DRIVER’S LICENSE NUMBER OR LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER**—if the applicant has a Nebraska driver’s license, the license number, and if the applicant does not have a Nebraska driver’s license, the last four digits of the applicant’s social security number.

**DATE OF APPLICATION FOR REGISTRATION**—the month, day, and year when the applicant presented himself or herself for registration, when the applicant completed and signed the registration application if the application was submitted by mail or delivered to the election official by the applicant’s personal messenger or personal agent, or when the completed application was submitted if the registration application was completed pursuant to section 32-304.

**PLACE OF BIRTH**—show the state, country, kingdom, empire, or dominion where the applicant was born.

**DATE OF BIRTH**—show the date of the applicant’s birth. The applicant shall be at least eighteen years of age or attain eighteen years of age on or before the first Tuesday after the first Monday in November to have the right to register and vote in any election in the present calendar year.

**REGISTRATION TAKEN BY**—show the signature of the authorized official or staff member accepting the application pursuant to section 32-309 or 32-310 or at least one of the deputy registrars taking the application pursuant to section 32-306, if applicable.

**PARTY AFFILIATION**—show the party affiliation of the applicant as Democrat, Republican, or Other . . . . . or show no party affiliation as Nonpartisan. (Note: If you wish to vote in both partisan and nonpartisan primary elections for state and local offices, you must indicate a political party affiliation on the registration application. If you register without a political party affiliation (nonpartisan), you will receive only the nonpartisan ballots for state and local offices at primary elections. If you register without a political party affiliation, you may vote in partisan primary elections for congressional offices.)

**OTHER**—information the Secretary of State determines will assist in the proper and accurate registration of the voter.

Immediately following the spaces for inserting information as provided in this section, the following statement shall be printed:

To the best of my knowledge and belief, I declare under penalty of election falsification that:

- (1) I live in the State of Nebraska at the address provided in this application;
- (2) I have not been convicted of a felony or, if convicted, it has been at least two years since I completed my sentence for the felony, including any parole term;
- (3) I have not been officially found to be non compos mentis (mentally incompetent); and
- (4) I am a citizen of the United States.

Any registrant who signs this application knowing that any of the information in the application is false shall be guilty of a Class IV felony under section 32-1502 of the statutes of Nebraska. The penalty for a Class IV felony is up to two years imprisonment and twelve months post-release supervision, a fine of up to ten thousand dollars, or both.

**APPLICANT’S SIGNATURE**—require the applicant to affix his or her signature to the application.

**Source:** Laws 1994, LB 76, § 74; Laws 1996, LB 900, § 1037; Laws 1997, LB 764, § 34; Laws 2003, LB 357, § 7; Laws 2003, LB 359, § 2; Laws 2005, LB 53, § 4; Laws 2005, LB 566, § 11; Laws 2011, LB449, § 3; Laws 2014, LB661, § 7; Laws 2017, LB451, § 5. Effective date August 24, 2017.

## ARTICLE 4 TIME OF ELECTIONS

Section  
32-404. Political subdivisions; elections; how held; notice of filing deadlines; certifications required; forms.

**32-404 Political subdivisions; elections; how held; notice of filing deadlines; certifications required; forms.**

(1) When any political subdivision holds an election in conjunction with the statewide primary or general election, the election shall be held as provided in the Election Act. Any other election held by a political subdivision shall be held as provided in the act unless otherwise provided by the charter, code, or bylaws of the political subdivision.

(2) No later than December 1 of each odd-numbered year, the election commissioner or county clerk shall give notice to each political subdivision of the filing deadlines for the statewide primary election. No later than January 5 of each even-numbered year, the governing board of each political subdivision which will hold an election in conjunction with a statewide primary election shall certify to the Secretary of State, the election commissioner, or the county clerk the name of the subdivision, the number of officers to be elected, the length of the terms of office, the vacancies to be filled by election and length of remaining term, and the number of votes to be cast by a registered voter for each office.

(3) No later than June 15 of each even-numbered year, the governing board of each reclamation district, county weed district, village, county under township organization, public power district receiving annual gross revenue of less than forty million dollars, or educational service unit which will hold an election in conjunction with a statewide general election shall certify to the Secretary of State, the election commissioner, or the county clerk the name of the subdivision, the number of officers to be elected, the length of the terms of office, the vacancies to be filled by election and length of remaining term, and the number of votes to be cast by a registered voter for each office.

(4) The Secretary of State shall prescribe the forms to be used for certification to him or her, and the election commissioner or county clerk shall prescribe the forms to be used for certification to him or her.

**Source:** Laws 1994, LB 76, § 96; Laws 1997, LB 764, § 46; Laws 2004, LB 927, § 1; Laws 2017, LB451, § 6.  
Effective date August 24, 2017.

**ARTICLE 5**

**OFFICERS AND ISSUES**

(a) OFFICES AND OFFICEHOLDERS

Section

32-538. City with city manager plan of government; city council; members; wards; terms; change in number; procedure.

32-539. City with commission plan of government; city council; members; nonpartisan ballot; mayor and council members; terms.

(c) VACANCIES

32-566. Legislature; vacancy; how filled.

32-573. Board of Regents of the University of Nebraska; vacancy; how filled.

(a) OFFICES AND OFFICEHOLDERS

**32-538 City with city manager plan of government; city council; members; wards; terms; change in number; procedure.**

(1) In a city which adopts the city manager plan of government pursuant to sections 19-601 to 19-610, the number of city council members shall be determined by the class and population of the city. In cities having one thousand or more but not more than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, there shall be five members, and in cities having more than forty thousand but less than two hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, there shall be seven members, except that in cities having between twenty-five thousand and forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the city council may by ordinance provide for seven members. Council members shall be elected from the city at large unless the city council by ordinance provides for the election of all or some of its council members by wards, the number and boundaries of which are provided for in section 16-104. Council members shall serve for terms of four years or until their successors are elected and qualified. The council members shall meet the qualifications found in sections 19-613 and 19-613.01.

The first election under an ordinance changing the number of council members or their manner of election shall take place at the next regular city election. Council members whose terms of office expire after the election shall continue in office until the expiration of the terms for which they were elected and until their successors are elected and qualified. At the first election under an ordinance changing the number of council members or their manner of election, one-half or the bare majority of council members elected at large, as the case may be, who receive the highest number of votes shall serve for four years and the other or others, if needed, for two years. At such first election, one-half or the bare majority of council members, as the case may be, who are elected by wards shall serve for four years and the other or others, if needed, for two years, as provided in the ordinance. If only one council member is to be elected at large at such first election, such member shall serve for four years.

(2) Commencing with the statewide primary election in 1976, and every two years thereafter, those candidates whose terms will be expiring shall be nominated at the statewide primary election and elected at the statewide general election.

**Source:** Laws 1994, LB 76, § 134; Laws 2001, LB 71, § 2; Laws 2001, LB 730, § 3; Laws 2017, LB113, § 37.  
Effective date August 24, 2017.

**32-539 City with commission plan of government; city council; members; nonpartisan ballot; mayor and council members; terms.**

(1) In a city which adopts the commission plan of government pursuant to sections 19-401 to 19-433, the number of city council members shall be determined by the class and population of the city. In cities having two thousand or more but not more than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, there shall be five members, in cities of the primary class, there shall be five members, and in cities of the metropolitan class, there shall be seven members. Council members shall be

elected from the city at large. In cities of the primary class, three excise members shall be elected in addition to the five council members. Nomination and election of all council members shall be by nonpartisan ballot. The mayor shall be elected for a four-year term.

(2) In cities containing two thousand or more but not more than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, at the city council election in 1980, the council member elected as the commissioner of the department of public works and the council member elected as the commissioner of the department of parks and recreation shall each serve a term of four years. If a city elects to adopt the commission plan of government after 1980, the council member elected as the commissioner of the department of public works and the council member elected as the commissioner of the department of public accounts and finances shall each serve a term of four years and the council member elected as the commissioner of the department of streets, public improvements, and public property and the council member elected as the commissioner of the department of parks and recreation shall each serve a term of two years. Upon the expiration of such terms, all council members shall serve terms of four years and until their successors are elected and qualified.

(3) Commencing with the statewide primary election in 2000, and every two years thereafter, candidates shall be nominated at the statewide primary election and elected at the statewide general election except as otherwise provided in section 19-405.

**Source:** Laws 1994, LB 76, § 135; Laws 1999, LB 250, § 3; Laws 2017, LB113, § 38.

Effective date August 24, 2017.

#### (c) VACANCIES

##### **32-566 Legislature; vacancy; how filled.**

(1) When a vacancy occurs in the Legislature, the office shall be filled by the Governor. The Governor shall appoint a suitable person possessing the qualifications necessary for a member of the Legislature.

(2) If the vacancy occurs at any time on or after May 1 of the second year of the term of office, the appointee shall serve for the remainder of the unexpired term. If the vacancy occurs at any time prior to May 1 of the second year of the term of office, the appointee shall serve until the first Tuesday following the first Monday in January following the next regular general election and at the regular general election a member of the Legislature shall be elected to serve the unexpired term as provided in subsection (3) of this section.

(3)(a) If the vacancy occurs on or after February 1 and prior to May 1 during the second year of the term of office, the vacancy shall be filled at the regular election in November of that year. Candidates shall file petitions to appear on the ballot for such election as provided in section 32-617.

(b) If the vacancy occurs at any time prior to February 1 of the second year of the term of office, the procedure for filling the vacated office shall be the same as the procedure for filling the office at the expiration of the term and

candidates shall be nominated and elected at the statewide primary and general elections during the second year of the term.

**Source:** Laws 1994, LB 76, § 162; Laws 2017, LB451, § 7.  
Effective date August 24, 2017.

**32-573 Board of Regents of the University of Nebraska; vacancy; how filled.**

(1) When a vacancy occurs in the Board of Regents of the University of Nebraska, the office shall be filled by the Governor. The Governor shall appoint a suitable person possessing the qualifications necessary for a member of the Board of Regents.

(2)(a) If the vacancy occurs during the first year of the term or before February 1 during a calendar year in which a statewide general election will be held, the appointee shall serve until the first Thursday following the first Tuesday in January following such general election and at such general election a member of the Board of Regents shall be elected to serve the unexpired term if any.

(b) If the vacancy occurs on or after February 1 during a calendar year in which a statewide general election will be held and if the term vacated expires on the first Thursday following the first Tuesday in January following such general election, the appointee shall serve the unexpired term.

(c) If the vacancy occurs on or after February 1 during a calendar year in which a statewide general election will be held and if the term vacated extends beyond the first Thursday following the first Tuesday in January following such general election, the appointee shall serve until the first Thursday following the first Tuesday in January following the second general election next succeeding his or her appointment and at such election a member of the Board of Regents shall be elected to serve the unexpired term if any.

**Source:** Laws 2003, LB 181, § 2; Laws 2017, LB451, § 8.  
Effective date August 24, 2017.

**ARTICLE 6**

**FILING AND NOMINATION PROCEDURES**

Section

32-601. Political subdivision; offices to be filled; filing deadlines; notices required.

32-602. Candidate; general requirements; limitation on filing for office.

32-607. Candidate filing forms; contents; filing officers.

32-610. Partisan elections; candidate; requirements.

**32-601 Political subdivision; offices to be filled; filing deadlines; notices required.**

(1) Each political subdivision shall notify the election commissioner or county clerk of the offices to be filled no later than:

(a) January 5 of any election year as provided in subsection (2) of section 32-404; or

(b) June 15 of any election year as provided in subsection (3) of section 32-404.

(2) The election commissioner or county clerk shall give notice of the offices to be filled by election and the filing deadlines for such offices by publication in

at least one newspaper of general circulation in the county once at least fifteen days prior to such deadlines.

**Source:** Laws 1994, LB 76, § 169; Laws 2017, LB451, § 9.  
Effective date August 24, 2017.

**32-602 Candidate; general requirements; limitation on filing for office.**

(1) Any person seeking an elective office shall be a registered voter at the time of filing for the office pursuant to section 32-606 or 32-611.

(2) Any person filing for office shall meet the constitutional and statutory requirements of the office for which he or she is filing. If a person is filing for a partisan office, he or she shall be a registered voter affiliated with the appropriate political party if required pursuant to section 32-702. If the person is required to sign a contract or comply with a bonding or equivalent commercial insurance policy requirement prior to holding such office, he or she shall be at least nineteen years of age at the time of filing for the office.

(3) A person shall not be eligible to file for an office if he or she holds the office and his or her term of office expires after the beginning of the term of office for which he or she would be filing. This subsection does not apply to filing for an office to represent a different district, ward, subdistrict, or subdivision of the same governmental entity as the office held at the time of filing.

(4)(a) Except as provided in subdivision (b) of this subsection, a person shall not be eligible to file for an office until he or she has paid any outstanding civil penalties and interest imposed pursuant to the Nebraska Political Accountability and Disclosure Act. The filing officer shall determine such eligibility before accepting a filing. The Nebraska Accountability and Disclosure Commission shall provide the filing officers with current information or the most current list of such outstanding civil penalties and interest owed pursuant to subdivision (13) of section 49-14,123.

(b) A person owing a civil penalty to the commission shall be eligible to file for an office if:

(i) The matter in which the civil penalty was assessed is pending on appeal before a state court; and

(ii) The person files with the commission a surety bond running in favor of the State of Nebraska with surety by a corporate bonding company authorized to do business in this state and conditioned upon the payment of the civil penalty imposed under the Nebraska Political Accountability and Disclosure Act.

(5) The governing body of the political subdivision swearing in the officer shall determine whether the person meets all requirements prior to swearing in the officer.

**Source:** Laws 1994, LB 76, § 170; Laws 2004, LB 884, § 17; Laws 2011, LB499, § 1; Laws 2017, LB85, § 1.  
Effective date August 24, 2017.

**Cross References**

Nebraska Political Accountability and Disclosure Act, see section 49-1401.

**32-607 Candidate filing forms; contents; filing officers.**



All candidate filing forms shall contain the following statement: I hereby swear that I will abide by the laws of the State of Nebraska regarding the results of the primary and general elections, that I am a registered voter and qualified to be elected, and that I will serve if elected. Candidate filing forms shall also contain the following information regarding the candidate: Name; residence address; mailing address if different from the residence address; telephone number; office sought; party affiliation if the office sought is a partisan office; a statement as to whether or not civil penalties are owed pursuant to the Nebraska Political Accountability and Disclosure Act; and, if civil penalties are owed, whether or not a surety bond has been filed pursuant to subdivision (4)(b) of section 32-602. Candidate filing forms shall be filed with the following filing officers:

(1) For candidates for national, state, or congressional office, directors of public power and irrigation districts, directors of reclamation districts, directors of natural resources districts, members of the boards of educational service units, members of governing boards of community colleges, delegates to national conventions, and other offices filled by election held in more than one county and judges desiring retention, in the office of the Secretary of State;

(2) For officers elected within a county, in the office of the election commissioner or county clerk;

(3) For officers in school districts which include land in adjoining counties, in the office of the election commissioner or county clerk of the county in which the greatest number of registered voters entitled to vote for the officers reside; and

(4) For city or village officers, in the office of the election commissioner or county clerk.

**Source:** Laws 1994, LB 76, § 175; Laws 1997, LB 764, § 55; Laws 1999, LB 571, § 2; Laws 2007, LB603, § 3; Laws 2009, LB501, § 2; Laws 2010, LB325, § 3; Laws 2015, LB575, § 15; Laws 2017, LB85, § 2.

Effective date August 24, 2017.

#### Cross References

Nebraska Political Accountability and Disclosure Act, see section 49-1401.

### **32-610 Partisan elections; candidate; requirements.**

No person shall be allowed to file a candidate filing form as a partisan candidate or to have his or her name placed upon a primary election ballot of a political party if subsection (2) of section 32-720 applies to the political party. For any other political party, no person shall be allowed to file a candidate filing form as a partisan candidate or to have his or her name placed upon a primary election ballot of a political party unless (1) he or she is a registered voter of the political party if required pursuant to section 32-702 and (2)(a) the political party has at least ten thousand persons affiliated as indicated by voter registration records in Nebraska or (b) at one of the two immediately preceding statewide general elections, (i) a candidate nominated by the political party polled at least five percent of the entire vote in the state in a statewide race or (ii) a combination of candidates nominated by the political party for a combination of districts that encompass all of the voters of the entire state polled at least

five percent of the vote in each of their respective districts. A candidate filing form filed in violation of this section shall be void.

**Source:** Laws 1994, LB 76, § 178; Laws 2012, LB1035, § 1; Laws 2014, LB1048, § 2; Laws 2017, LB34, § 1.  
Effective date August 24, 2017.

**ARTICLE 8**

**NOTICE, PUBLICATION, AND PRINTING OF BALLOTS**

Section  
32-802. Notice of election; contents.

**32-802 Notice of election; contents.**

The notice of election for any election shall state the date on which the election is to be held and the hours the polls will be open and list all offices, candidates, and issues that will appear on the ballots. The notice of election shall be printed in English and in any other language required pursuant to the Voting Rights Act Language Assistance Amendments of 1992. In the case of a primary election, the notice of election shall list all offices and candidates that are being forwarded to the general election. The notice of election shall only state that amendments or referendums will be voted upon and that the Secretary of State will publish a true copy of the title and text of any amendments or referendums once each week for three consecutive weeks preceding the election. Such notice of election shall appear in at least one newspaper designated by the election commissioner, county clerk, city council, or village board no later than forty-two days prior to the election. The election commissioner or county clerk shall, not later than forty-two days prior to the election, (1) post in his or her office the same notice of election published in the newspaper and (2) provide a copy of the notice to the political subdivisions appearing on the ballot. The election commissioner or county clerk shall correct the ballot to reflect any corrections received within five days after mailing the notice as provided in section 32-819. The notice of election shall be posted in lieu of sample ballots until such time as sample ballots are printed. If joint elections are held in conjunction with the statewide primary or general election by a county, city, or village, only one notice of election need be published and signed by the election commissioner or county clerk.

**Source:** Laws 1994, LB 76, § 223; Laws 2002, LB 935, § 6; Laws 2017, LB451, § 10.  
Effective date August 24, 2017.

**ARTICLE 9**

**VOTING AND ELECTION PROCEDURES**

Section  
32-915. Provisional ballot; conditions; certification.  
32-939. Nebraska resident residing outside the state or country; registration to vote; application for ballot; when; elector and citizen outside the country; register to vote or voting; form.  
32-939.02. Person residing outside the country; ballot for early voting; request; use of Federal Post Card Application or personal letter; special ballot; use of Federal Write-In Absentee Ballot; Secretary of State; duties; oath.  
32-947. Ballot to vote early; delivery; procedure; identification envelope; instructions.

**32-915 Provisional ballot; conditions; certification.**

(1) A person whose name does not appear on the precinct list of registered voters at the polling place for the precinct in which he or she resides, whose name appears on the precinct list of registered voters at the polling place for the precinct in which he or she resides at a different residence address as described in section 32-914.02, or whose name appears with a notation that he or she received a ballot for early voting may vote a provisional ballot if he or she:

- (a) Claims that he or she is a registered voter who has continuously resided in the county in which the precinct is located since registering to vote;
- (b) Is not entitled to vote under section 32-914.01 or 32-914.02;
- (c) Has not registered to vote or voted in any other county since registering to vote in the county in which the precinct is located;
- (d) Has appeared to vote at the polling place for the precinct to which the person would be assigned based on his or her residence address; and
- (e) Completes and signs a registration application before voting.

(2) A voter whose name appears on the precinct list of registered voters for the polling place with a notation that the voter is required to present identification pursuant to section 32-318.01 but fails to present identification may vote a provisional ballot if he or she completes and signs a registration application before voting.

(3) Each person voting by provisional ballot shall enclose his or her ballot in an envelope marked Provisional Ballot and shall, by signing the certification on the front of the envelope or a separate form attached to the envelope, certify to the following facts:

- (a) I am a registered voter in . . . . . County;
- (b) My name or address did not correctly appear on the precinct list of registered voters;
- (c) I registered to vote on or about this date . . . . .;
- (d) I registered to vote  
 . . . . in person at the election office or a voter registration site,  
 . . . . by mail,  
 . . . . by using the Secretary of State’s web site,  
 . . . . through the Department of Motor Vehicles,  
 . . . . on a form through another state agency,  
 . . . . in some other way;
- (e) I have not resided outside of this county or voted outside of this county since registering to vote in this county;
- (f) My current address is shown on the registration application completed as a requirement for voting by provisional ballot; and
- (g) I am eligible to vote in this election and I have not voted and will not vote in this election except by this ballot.

(4) The voter shall sign the certification under penalty of election falsification. The following statements shall be on the front of the envelope or on the attached form: By signing the front of this envelope or the attached form you

are certifying to the information contained on this envelope or the attached form under penalty of election falsification. Election falsification is a Class IV felony and may be punished by up to two years imprisonment and twelve months post-release supervision, a fine of up to ten thousand dollars, or both.

(5) If the person’s name does not appear on the precinct list of registered voters for the polling place and the judge or clerk of election determines that the person’s residence address is located in another precinct within the same county, the judge or clerk of election shall direct the person to his or her correct polling place to vote.

**Source:** Laws 1994, LB 76, § 258; Laws 1997, LB 764, § 87; Laws 1999, LB 234, § 12; Laws 2003, LB 358, § 24; Laws 2005, LB 401, § 5; Laws 2005, LB 566, § 37; Laws 2010, LB325, § 5; Laws 2010, LB951, § 4; Laws 2014, LB661, § 14; Laws 2017, LB451, § 11. Effective date August 24, 2017.

**32-939 Nebraska resident residing outside the state or country; registration to vote; application for ballot; when; elector and citizen outside the country; register to vote or voting; form.**

(1) As provided in section 32-939.02, the persons listed in this subsection who are residents of Nebraska but who reside outside of Nebraska or the United States shall be allowed to simultaneously register to vote and make application for ballots for all elections in a calendar year through the use of the Federal Post Card Application or a personal letter which includes the same information as appears on the Federal Post Card Application:

- (a) Members of the armed forces of the United States or the United States Merchant Marine, and their spouses and dependents residing with them who are absent from the state;
- (b) Citizens temporarily residing outside of the United States and the District of Columbia; and
- (c) Overseas citizens.

(2)(a) As provided in section 32-939.02, a person who is the age of an elector and a citizen of the United States residing outside the United States, who has never resided in the United States, who has not registered to vote in any other state of the United States, and who has a parent registered to vote within this state shall be eligible to register to vote and vote in one county in which either one of his or her parents is a registered voter.

(b) A person registering to vote or voting pursuant to this subsection shall sign and enclose with the registration application and with the ballot being voted a form provided by the election commissioner or county clerk substantially as follows: I am the age of an elector and a citizen of the United States residing outside the United States, I have never resided in the United States, I have not registered to vote in any other state of the United States, and I have a parent registered to vote in . . . . . County, Nebraska. I hereby declare, under penalty of election falsification, a Class IV felony, that the statements above are true to the best of my knowledge.

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO TWO YEARS AND TWELVE MONTHS POST-RELEASE SUPERVISION OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

(Signature of Voter) .....

**Source:** Laws 1994, LB 76, § 282; Laws 2004, LB 727, § 1; Laws 2005, LB 98, § 11; Laws 2005, LB 401, § 7; Laws 2005, LB 566, § 41; Laws 2010, LB951, § 5; Laws 2011, LB499, § 4; Laws 2017, LB451, § 12.  
Effective date August 24, 2017.

**32-939.02 Person residing outside the country; ballot for early voting; request; use of Federal Post Card Application or personal letter; special ballot; use of Federal Write-In Absentee Ballot; Secretary of State; duties; oath.**

(1) 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.

(2) An omission of required information, except the political party affiliation of the applicant, may prevent the processing of an application for and mailing of ballots. The request for any ballots and a registration application shall be sent to the election commissioner or county clerk of the county of the applicant's residence. The request may be sent at any time in the same calendar year as the election, except that the request shall be received by the election commissioner or county clerk not later than the third Friday preceding an election to vote in that election. If an applicant fails to indicate his or her political party affiliation on the application, the applicant shall be registered as nonpartisan.

(3) A person described in section 32-939 may register to vote through the use of the Federal Post Card Application or a personal letter which includes the same information as appears on the Federal Post Card Application and may simultaneously make application for ballots for all elections in a calendar year. The person may indicate a preference for ballots and other election materials to be delivered via facsimile transmission or electronic mail by indicating such preference on the Federal Post Card Application. If the person indicates such a preference, the election commissioner or county clerk shall accommodate the voter's preference.

(4) If the ballot for early voting has not been printed in sufficient time to meet the request and special requirements of a voter meeting the criteria of section 32-939, the election commissioner or county clerk may issue a special ballot at least sixty days prior to an election to such a voter upon a written request by such voter requesting the special ballot. For purposes of this subsection, 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. The election commissioner or county clerk shall include with the special ballot a complete list of the nominated candidates and issues to be voted upon by the voter which are known at the time of the voter's request.

(5) Any person meeting the criteria in section 32-939 may cast a ballot by the use of the Federal Write-In Absentee Ballot. The Federal Write-In Absentee Ballot may be used for all elections. If a person casting a ballot using the Federal Write-In Absentee Ballot is not a registered voter, the information submitted in the Federal Write-In Absentee Ballot transmission envelope shall be treated as a voter registration application.

(6)(a) Any person requesting a ballot under this section may receive and return the ballot and the oath prescribed in subdivision (b) of this subsection using any method of transmission authorized by the Secretary of State.

(b) An oath shall be delivered with the ballot and shall be in a form substantially as follows:

VOTER'S OATH

I, the undersigned voter, declare that the ballot or ballots contained no voting marks of any kind when I received them, and I caused the ballot or ballots to be marked.

To the best of my knowledge and belief, I declare under penalty of election falsification that:

(a) I, ....., am a registered voter in ..... County;

(b) I have voted the ballot and am returning it in compliance with Nebraska law; and

(c) I have not voted and will not vote in this election except by this ballot.

ANY PERSON WHO SIGNS THIS FORM KNOWING THAT ANY OF THE INFORMATION IN THE FORM IS FALSE SHALL BE GUILTY OF ELECTION FALSIFICATION, A CLASS IV FELONY UNDER SECTION 32-1502 OF THE STATUTES OF NEBRASKA. THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO TWO YEARS AND TWELVE MONTHS POST-RELEASE SUPERVISION OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

I also understand that failure to sign below will invalidate my ballot.

Signature .....

(7) The Secretary of State shall develop a process for a person casting a ballot under this section to check the status of his or her ballot via the Internet or a toll-free telephone call.

**Source:** Laws 2010, LB951, § 6; Laws 2017, LB451, § 13.  
Effective date August 24, 2017.

**32-947 Ballot to vote early; delivery; procedure; identification envelope; instructions.**

(1) Upon receipt of an application or other request for a ballot to vote early, the election commissioner or county clerk shall determine whether the applicant is a registered voter and is entitled to vote as requested. If the election commissioner or county clerk determines that the applicant is a registered voter entitled to vote early and the application was received not later than the close of business on the second Friday preceding the election, the election commissioner or county clerk shall deliver a ballot to the applicant in person or by mail, postage paid. The election commissioner or county clerk or any employee of the election commissioner or county clerk shall write or cause to be affixed his or her customary signature or initials on the ballot.

(2) An unsealed identification envelope shall be delivered with the ballot, and upon the back of the envelope shall be printed a form substantially as follows:

VOTER'S OATH

I, the undersigned voter, declare that the enclosed ballot or ballots contained no voting marks of any kind when I received them, and I caused the ballot or ballots to be marked, enclosed in the identification envelope, and sealed in such envelope.

To the best of my knowledge and belief, I declare under penalty of election falsification that:

- (a) I, ....., am a registered voter in ..... County;
- (b) I reside in the State of Nebraska at .....
- (c) I have voted the enclosed ballot and am returning it in compliance with Nebraska law; and
- (d) I have not voted and will not vote in this election except by this ballot.

ANY PERSON WHO SIGNS THIS FORM KNOWING THAT ANY OF THE INFORMATION IN THE FORM IS FALSE SHALL BE GUILTY OF ELECTION FALSIFICATION, A CLASS IV FELONY UNDER SECTION 32-1502 OF THE STATUTES OF NEBRASKA. THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO TWO YEARS AND TWELVE MONTHS POST-RELEASE SUPERVISION OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

I also understand that failure to sign below will invalidate my ballot.

Signature .....

(3) If the ballot and identification envelope will be returned by mail or by someone other than the voter, the election commissioner or county clerk shall include with the ballot an identification envelope upon the face of which shall be printed the official title and post office address of the election commissioner or county clerk.

(4) The election commissioner or county clerk shall also enclose with the ballot materials:

- (a) A registration application, if the election commissioner or county clerk has determined that the applicant is not a registered voter pursuant to section 32-945, with instructions that failure to return the completed and signed application indicating the residence address as it appears on the voter's request for a ballot to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted;
- (b) A registration application and the oath pursuant to section 32-946, if the voter is without a residence address, with instructions that the residence address of the voter shall be deemed that of the office of the election commissioner or county clerk of the county of the voter's prior residence and that failure to return the completed and signed application and oath to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted; or
- (c) Written instructions directing the voter to submit a copy of an identification document pursuant to section 32-318.01 if the voter is required to present identification under such section and advising the voter that failure to submit identification to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted.

(5) The election commissioner or county clerk may enclose with the ballot materials a separate return envelope for the voter's use in returning his or her identification envelope containing the voted ballot, registration application, and other materials that may be required.

**Source:** Laws 1994, LB 76, § 290; Laws 1995, LB 514, § 5; Laws 1999, LB 571, § 8; Laws 1999, LB 802, § 16; Laws 2002, LB 1054, § 22; Laws 2003, LB 359, § 7; Laws 2005, LB 98, § 19; Laws 2005, LB 566, § 48; Laws 2008, LB838, § 2; Laws 2011, LB449, § 9; Laws 2015, LB575, § 22; Laws 2016, LB874, § 4; Laws 2017, LB451, § 14.  
Effective date August 24, 2017.

**Cross References**

Forgery or false placement of initials or signatures on ballot pursuant to section, penalty, see section 32-1516.



## CHAPTER 33

### FEES AND SALARIES

Section	
33-106.	Clerk of the district court; fees; enumerated.
33-106.03.	Dissolution of marriage; additional fees.
33-107.02.	Paternity determination; parental support proceeding; certain marriage, child support, child custody, or parenting time actions; additional mediation fee and civil legal services fee.
33-109.	Register of deeds; county clerk; fees.
33-116.	County surveyor; compensation; fees; mileage; equipment furnished.

#### **33-106 Clerk of the district court; fees; enumerated.**

(1) In addition to the judges' retirement fund fee provided in section 24-703 and the fees provided in section 33-106.03 and except as otherwise provided by law, the fees of the clerk of the district court shall be as follows: There shall be a docket fee of forty-two dollars for each civil and criminal case except (a) a case commenced by filing a transcript of judgment as hereinafter provided, (b) proceedings under the Nebraska Workers' Compensation Act and the Employment Security Law, when provision is made for the fees that may be charged, and (c) a criminal case appealed to the district court from any court inferior thereto as hereinafter provided. There shall be a docket fee of twenty-five dollars for each case commenced by filing a transcript of judgment from another court in this state for the purpose of obtaining a lien. There shall be a docket fee of twenty-seven dollars for each criminal case appealed to the district court from any court inferior thereto.

(2) In all cases, other than those appealed from an inferior court or original filings which are within jurisdictional limits of an inferior court and when a jury is demanded in district court, the docket fee shall cover all fees of the clerk, except that the clerk shall be paid for each copy or transcript ordered of any pleading, record, or other paper and that the clerk shall be entitled to a fee of fifteen dollars for making a complete record of a case.

(3) The fee for making a complete record of a case shall be taxed as a part of the costs of the case. In all civil cases, except habeas corpus cases in which a poverty affidavit is filed and approved by the court, and for all other services, the docket fee or other fee shall be paid by the party filing the case or requesting the service at the time the case is filed or the service requested.

(4) For any other service which may be rendered or performed by the clerk but which is not required in the discharge of his or her official duties, the fee shall be the same as that of a notary public but in no case less than one dollar.

**Source:** R.S.1866, c. 19, § 3, p. 157; Laws 1877, § 5, p. 217; Laws 1899, c. 31, § 1, p. 164; Laws 1905, c. 68, § 1, p. 363; Laws 1909, c. 55, § 1, p. 280; R.S.1913, §§ 2421, 2429; Laws 1917, c. 40, § 1, p. 119; Laws 1919, c. 82, § 1, p. 204; C.S.1922, §§ 2362, 2369; Laws 1925, c. 81, § 1, p. 255; Laws 1927, c. 118, § 1, p. 328; C.S.1929, §§ 33-101, 33-108; R.S.1943, § 33-106; Laws 1947, c. 120, § 1, p. 353; Laws 1949, c. 94, § 1(1), p. 252; Laws 1951, c. 106, § 2, p. 512; Laws 1959, c. 140, § 4, p. 546; Laws 1961, c. 157, § 1, p.

480; Laws 1965, c. 125, § 3, p. 463; Laws 1977, LB 126, § 2; Laws 1981, LB 84, § 1; Laws 1983, LB 617, § 4; Laws 1986, LB 811, § 14; Laws 1986, LB 333, § 8; Laws 2003, LB 760, § 13; Laws 2005, LB 348, § 7; Laws 2011, LB17, § 5; Laws 2017, LB307, § 1.

Effective date August 24, 2017.

**Cross References**

**Employment Security Law**, see section 48-601.

**Nebraska Workers' Compensation Act**, see section 48-1,110.

**33-106.03 Dissolution of marriage; additional fees.**

In addition to the fees provided for in sections 33-106 and 33-123, the clerk of the court shall collect an additional fifty dollars as a mediation fee and twenty-five dollars as a child abuse prevention fee for each complaint filed for dissolution of marriage. The fees shall be remitted to the State Treasurer who shall credit the child abuse prevention fee to the Nebraska Child Abuse Prevention Fund and the mediation fee 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; Laws 2017, LB307, § 2.

Effective date August 24, 2017.

**33-107.02 Paternity determination; parental support proceeding; certain marriage, child support, child custody, or parenting time actions; additional mediation fee and civil legal services fee.**

(1) A mediation fee of fifty dollars and a civil legal services fee of fifteen dollars shall be collected by the clerk of the county court or the clerk of the district court for each paternity determination or parental support proceeding under sections 43-1401 to 43-1418, for each complaint or action to modify a decree of dissolution or annulment of marriage, and for each complaint or action to modify an award of child support, 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. The civil legal services fee shall be credited to the Legal Aid and Services Fund, and the mediation fee shall be credited to the Parenting Act Fund.

(2) Any proceeding filed by a county attorney or an authorized attorney, 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 subsection (1) of this section. In any such proceeding, a mediation fee of fifty dollars and a civil legal services fee of fifteen dollars shall be collected by the clerk of the county court or the clerk of the district court for any pleading in such proceeding filed by any party, other than a county attorney or authorized attorney, subsequent to the paternity filing if such pleading is to modify an award of child support or to establish or modify 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. The mediation fee shall be credited to the Parenting Act Fund and the civil legal services fee shall be credited to the Legal Aid and Services Fund.

(3) For purposes of this section, authorized attorney has the same meaning as in section 43-1704.

**Source:** Laws 1997, LB 729, § 2; Laws 1999, LB 19, § 1; Laws 2007, LB554, § 27; Laws 2017, LB307, § 3.  
Effective date August 24, 2017.

**33-109 Register of deeds; county clerk; fees.**

(1) The register of deeds and the county clerk shall receive for recording a deed, mortgage, or release, recording and indexing of a will, recording and indexing of a decree in a testate estate, recording proof of publication, or recording any other instrument, a fee of ten dollars for the first page and six dollars for each additional page. Two dollars and fifty cents of the ten-dollar fee for recording the first page and fifty cents of the six-dollar fee for recording each additional page shall be used exclusively for the purposes of preserving and maintaining public records of the office of the register of deeds and for modernization and technology needs relating to such records and preserving and maintaining public records of a register of deeds office that has been consolidated with another county office pursuant to section 22-417 and for modernization and technology needs relating to such records. The funds allocated under this subsection shall not be substituted for other allocations of county general funds to the register of deeds office or any other county office for the purposes enumerated in this subsection.

(2) The cost for a certified copy of any instrument filed or recorded in the office of county clerk or register of deeds shall be one dollar and fifty cents per page.

(3) No fees shall be received for recording instruments for the Department of Health and Human Services pursuant to section 68-990.

**Source:** Laws 1879, § 1, p. 107; Laws 1887, c. 42, § 1, p. 461; R.S.1913, § 2435; C.S.1922, § 2375; C.S.1929, § 33-114; Laws 1931, c. 66, § 1, p. 185; Laws 1935, c. 80, § 1, p. 269; Laws 1941, c. 67, § 1, p. 292; C.S.Supp.,1941, § 33-114; R.S.1943, § 33-109; Laws 1949, c. 93, § 5, p. 247; Laws 1961, c. 159, § 1, p. 484; Laws 1963, c. 185, § 1, p. 626; Laws 1965, c. 185, § 1, p. 574; Laws 1967, c. 204, § 1, p. 560; Laws 1969, c. 270, § 1, p. 1034; Laws 1971, LB 381, § 1; Laws 1972, LB 1264, § 1; Laws 1983, LB 463, § 1; Laws 2012, LB14, § 4; Laws 2017, LB152, § 2; Laws 2017, LB268, § 7.  
Effective date August 24, 2017.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB152, section 2, with LB268, section 7, to reflect all amendments.

**33-116 County surveyor; compensation; fees; mileage; equipment furnished.**

Each county surveyor shall be entitled to receive the following fees: (1) For all services rendered to the county or state, a daily rate as determined by the county board; and (2) for each mile actually and necessarily traveled in going to and from work, the rate allowed by the provisions of section 81-1176. All expense of necessary assistants in the performance of the above work, the fees of witnesses, and material used for perpetuation and reestablishing lost exterior section and quarter corners necessary for the survey shall be paid for by the county and the remainder of the cost of the survey shall be paid for by the

parties for whom the work may be done. All necessary equipment, conveyance, and repairs to such equipment, required in the performance of the duties of the office, shall be furnished such surveyor at the expense of the county, except that in any county with a population of less than sixty thousand the county board may, in its discretion, allow the county surveyor a salary fixed pursuant to section 23-1114, payable monthly, by warrant drawn on the general fund of the county. All fees received by surveyors so receiving a salary may, with the authorization of the county board, be retained by the surveyor, but in the absence of such authorization all such fees shall be turned over to the county treasurer monthly for credit to the county general fund.

**Source:** R.S.1866, c. 19, § 16, p. 168; Laws 1869, § 1, p. 157; Laws 1899, c. 32, § 1, p. 167; Laws 1913, c. 43, § 12, p. 146; R.S.1913, § 2440; Laws 1919, c. 75, § 1, p. 194; C.S.1922, § 2380; Laws 1927, c. 114, § 1, p. 321; C.S.1929, § 33-119; Laws 1931, c. 65, § 7, p. 180; C.S.Supp.,1941, § 33-119; Laws 1943, c. 90, § 19, p. 305; R.S.1943, § 33-116; Laws 1947, c. 122, § 1, p. 357; Laws 1953, c. 117, § 1, p. 372; Laws 1957, c. 70, § 4, p. 296; Laws 1961, c. 158, § 2, p. 482; Laws 1961, c. 160, § 1, p. 485; Laws 1969, c. 272, § 1, p. 1036; Laws 1981, LB 204, § 50; Laws 1982, LB 127, § 8; Laws 1996, LB 1011, § 21; Laws 2017, LB200, § 3. Effective date August 24, 2017.

## CHAPTER 35

### FIRE COMPANIES AND FIREFIGHTERS

Article.

5. Rural and Suburban Fire Protection Districts. 35-507.

#### ARTICLE 5

#### RURAL AND SUBURBAN FIRE PROTECTION DISTRICTS

Section

35-507. District; meeting; when held.

##### **35-507 District; meeting; when held.**

A regular meeting of the registered voters who are residing within the boundaries of a district shall be held at the time of the budget hearing as provided by the Nebraska Budget Act, and special meetings may be called by the board of directors at any time. Notice of a meeting shall be given by the secretary-treasurer by one publication in a legal newspaper of general circulation in each county in which such district is situated. Notice of the place and time of a meeting shall be published at least four calendar days prior to the date set for meeting. For purposes of such notice, the four calendar days shall include the day of publication but not the day of the meeting.

**Source:** Laws 1949, c. 98, § 7, p. 265; Laws 1971, LB 713, § 1; Laws 1992, LB 1063, § 34; Laws 1992, Second Spec. Sess., LB 1, § 34; Laws 1998, LB 1120, § 10; Laws 2017, LB151, § 4.  
Effective date April 28, 2017.

##### **Cross References**

**Nebraska Budget Act**, see section 13-501.



## CHAPTER 37

### GAME AND PARKS

Article.

3. Commission Powers and Duties.
  - (b) Funds. 37-327.02.
5. Regulations and Prohibited Acts.
  - (a) General Provisions. 37-504.
  - (b) Game, Birds, and Aquatic Invasive Species. 37-513.
6. Enforcement. 37-614 to 37-617.
12. State Boat Act. 37-1201 to 37-1287.
16. Interstate Wildlife Violator Compact. 37-1601.

#### ARTICLE 3

#### COMMISSION POWERS AND DUTIES

##### (b) FUNDS

Section

- 37-327.02. Game and Parks Commission Capital Maintenance Fund; created; use; investment.

##### (b) FUNDS

**37-327.02 Game and Parks Commission Capital Maintenance Fund; created; use; investment.**

The Game and Parks Commission Capital Maintenance Fund is created. The fund shall consist of money credited to the fund pursuant to section 77-27,132, transfers authorized by the Legislature, and any gifts, grants, bequests, or donations to the fund. The fund shall be administered by the commission and shall be used to build, repair, renovate, rehabilitate, restore, modify, or improve any infrastructure within the statutory authority and administration of the commission. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Transfers may be made from the Game and Parks Commission Capital Maintenance Fund to the General Fund at the direction of the Legislature through June 30, 2019. The State Treasurer shall transfer four million five hundred thousand dollars from the Game and Parks Commission Capital Maintenance Fund to the General Fund between June 1, 2018, and June 30, 2018, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services. The State Treasurer shall transfer four million five hundred thousand dollars from the Game and Parks Commission Capital Maintenance Fund to the General Fund between June 1, 2019, and June 30, 2019, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

**Source:** Laws 2014, LB814, § 2; Laws 2017, LB331, § 22.  
Effective date May 16, 2017.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 5

REGULATIONS AND PROHIBITED ACTS

(a) GENERAL PROVISIONS

Section

37-504. Violations; penalties; exception.

(b) GAME, BIRDS, AND AQUATIC INVASIVE SPECIES

37-513. Shooting at wildlife from highway or roadway; violation; penalty; trapping in county road right-of-way; county; powers; limitation on traps.

(a) GENERAL PROVISIONS

**37-504 Violations; penalties; exception.**

(1) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession:

(a) Any deer, antelope, swan, or wild turkey shall be guilty of a Class III misdemeanor and, upon conviction, shall be fined at least five hundred dollars for each violation; or

(b) Any elk shall be guilty of a Class II misdemeanor and, upon conviction, shall be fined at least one thousand dollars for each violation.

(2) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession any mountain sheep shall be guilty of a Class I misdemeanor and shall be fined at least one thousand dollars upon conviction.

(3) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession any quail, pheasant, partridge, Hungarian partridge, curlew, grouse, mourning dove, sandhill crane, or waterfowl shall be guilty of a Class III misdemeanor and shall be fined at least five hundred dollars upon conviction.

(4) Any person who unlawfully takes any game or unlawfully has in his or her possession any such game shall be guilty of a Class III misdemeanor and, except as otherwise provided in this section and section 37-501, shall be fined at least fifty dollars for each animal unlawfully taken or unlawfully possessed up to the maximum fine authorized by law upon conviction.

(5) Any person who, in violation of the Game Law, takes any mourning dove that is not flying shall be guilty of a Class V misdemeanor.

(6) Any person who, in violation of the Game Law, has in his or her possession any protected bird, or destroys or takes the eggs or nest of any such bird, shall be guilty of a Class V misdemeanor.

(7) The provisions of this section shall not render it unlawful for anyone operating a captive wildlife facility or an aquaculture facility, pursuant to the laws of this state, to at any time kill game or fish actually raised thereon or lawfully placed thereon by such person.



(8) A person holding a special permit pursuant to the Game Law for the taking of any game or any birds not included in the definition of game shall not be liable under this section while acting under the authority of such permit.

**Source:** Laws 1929, c. 112, III, § 9, p. 419; C.S.1929, § 37-309; Laws 1937, c. 89, § 10, p. 295; Laws 1941, c. 72, § 4, p. 302; C.S.Supp.,1941, § 37-309; Laws 1943, c. 94, § 8, p. 327; R.S. 1943, § 37-308; Laws 1947, c. 134, § 1, p. 377; Laws 1949, c. 104, § 1, p. 283; Laws 1953, c. 123, § 3, p. 387; Laws 1957, c. 139, § 10, p. 469; Laws 1975, LB 142, § 3; Laws 1977, LB 40, § 182; Laws 1981, LB 72, § 16; Laws 1989, LB 34, § 18; Laws 1997, LB 107, § 4; R.S.Supp.,1997, § 37-308; Laws 1998, LB 922, § 224; Laws 1999, LB 176, § 67; Laws 2009, LB105, § 28; Laws 2017, LB566, § 2.  
Effective date August 24, 2017.

(b) GAME, BIRDS, AND AQUATIC INVASIVE SPECIES

**37-513 Shooting at wildlife from highway or roadway; violation; penalty; trapping in county road right-of-way; county; powers; limitation on traps.**

(1) It shall be unlawful to shoot at any wildlife from any highway or roadway, which includes that area of land from the center of the traveled surface to the right-of-way on either side. Any person violating this subsection shall be guilty of a Class III misdemeanor and shall be fined at least five hundred dollars.

(2)(a) Any county may adopt a resolution having the force and effect of law to prohibit the trapping of wildlife in the county road right-of-way or in a certain area of the right-of-way as designated by the county.

(b) A person trapping wildlife in a county road right-of-way is not allowed to use traps in the county road right-of-way that are larger than those allowed by the commission as of February 1, 2009, on any land owned or controlled by the commission.

(c) For purposes of this subsection, county road right-of-way means the area which has been designated a part of the county road system and which has not been vacated pursuant to law.

**Source:** Laws 1929, c. 112, V, § 1, p. 426; C.S.1929, § 37-501; Laws 1937, c. 89, § 11, p. 296; Laws 1941, c. 72, § 6, p. 303; C.S.Supp.,1941, § 37-501; Laws 1943, c. 94, § 11, p. 329; R.S.1943, § 37-501; Laws 1947, c. 137, § 1, p. 382; Laws 1959, c. 150, § 6, p. 572; Laws 1961, c. 169, § 5, p. 503; Laws 1963, c. 204, § 1, p. 656; Laws 1965, c. 203, § 1, p. 606; Laws 1967, c. 220, § 1, p. 594; Laws 1969, c. 294, § 1, p. 1066; Laws 1972, LB 1447, § 1; Laws 1974, LB 765, § 1; Laws 1974, LB 779, § 1; Laws 1975, LB 142, § 4; Laws 1975, LB 220, § 1; Laws 1989, LB 34, § 26; Laws 1989, LB 171, § 1; R.S.1943, (1993), § 37-501; Laws 1998, LB 922, § 233; Laws 2007, LB299, § 13; Laws 2008, LB865, § 1; Laws 2009, LB5, § 1; Laws 2009, LB105, § 30; Laws 2017, LB566, § 3.  
Effective date August 24, 2017.

**ARTICLE 6  
ENFORCEMENT**

## Section

37-614. Revocation and suspension of permits; grounds.

37-615. Revoked or suspended permit; unlawful acts; violation; penalty.

37-617. Suspension, revocation, or conviction; court; duties.

**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 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 year. The court shall consider the number and severity of the violations of the Game Law in determining the length of the revocation and suspension. The violations shall be:

(a) Hunting, fishing, or fur harvesting without a permit in violation of section 37-411;

(b) Hunting from a vehicle, aircraft, or boat in violation of section 37-513, 37-514, 37-515, 37-535, or 37-538; and

(c) Knowingly taking any wildlife on private land without permission in violation of section 37-722.

(3) When a person pleads guilty to or is convicted of any violation of the Game Law, the rules and regulations of the commission, or commission orders 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 not less than one year.

**Source:** Laws 1998, LB 922, § 304; Laws 1999, LB 176, § 89; Laws 2007, LB299, § 16; Laws 2009, LB5, § 2; Laws 2013, LB499, § 16; Laws 2017, LB566, § 4.  
Effective date August 24, 2017.

**37-615 Revoked or suspended permit; unlawful acts; violation; penalty.**

It shall be unlawful for any person to take any species of wildlife protected by the Game Law while his or her permits are revoked or suspended. It shall be unlawful for any person to apply for or purchase a permit to hunt, fish, or harvest fur in Nebraska while his or her permits are revoked and while the privilege to purchase such permits is suspended. Any person who violates this section shall be guilty of a Class I misdemeanor and in addition shall be suspended from hunting, fishing, and fur harvesting or purchasing permits to hunt, fish, and harvest fur for a period of not less than two years as the court directs. The court shall consider the number and severity of the violations of the Game Law in determining the length of the suspension.

**Source:** Laws 1998, LB 922, § 305; Laws 2011, LB41, § 28; Laws 2017, LB566, § 5.  
Effective date August 24, 2017.

**37-617 Suspension, revocation, or conviction; court; duties.**

The court shall notify the commission of any suspension, revocation, or conviction under sections 37-614 to 37-616.

**Source:** Laws 1998, LB 922, § 307; Laws 1999, LB 176, § 90; Laws 2017, LB566, § 6.  
Effective date August 24, 2017.

**ARTICLE 12**

**STATE BOAT ACT**

Section	
37-1201.	Act, how cited; declaration of policy.
37-1278.	Certificate of title; application; contents; issuance; transfer of motorboat.
37-1279.	Certificate of title; issuance; form; county treasurer; duties; filing.
37-1283.	New certificate; when issued; proof required; processing of application.
37-1285.01.	Electronic certificate of title; changes authorized.
37-1287.	Fees; disposition.

**37-1201 Act, how cited; declaration of policy.**

Sections 37-1201 to 37-12,110 shall be known and may be cited as the State Boat Act. It is the policy of this state to promote safety for persons and property in and connected with the use, operation, and equipment of vessels and to promote uniformity of laws relating thereto.

**Source:** Laws 1978, LB 21, § 1; Laws 2004, LB 560, § 3; Laws 2009, LB49, § 3; Laws 2009, LB202, § 1; Laws 2011, LB667, § 8; Laws 2017, LB263, § 2.  
Operative date August 24, 2017.

**37-1278 Certificate of title; application; contents; issuance; transfer of motorboat.**

(1) Application for a certificate of title shall be presented to the county treasurer, shall be made upon a form prescribed by the Department of Motor Vehicles, and shall be accompanied by the fee prescribed in section 37-1287. The owner of a motorboat for which a certificate of title is required shall obtain a certificate of title prior to registration required under section 37-1214. The buyer of a motorboat sold pursuant to section 76-1607 shall present documentation that such sale was completed in compliance with such section.

(2)(a) If a certificate of title has previously been issued for the motorboat in this state, the application for a new certificate of title shall be accompanied by the certificate of title duly assigned. If a certificate of title has not previously been issued for the motorboat in this state, the application shall be accompanied by a certificate of number from this state, a manufacturer's or importer's certificate, a duly certified copy thereof, proof of purchase from a governmental agency or political subdivision, a certificate of title from another state, or a court order issued by a court of record, a manufacturer's certificate of origin, or an assigned registration certificate, if the motorboat was brought into this state from a state which does not have a certificate of title law. The county treasurer shall retain the evidence of title presented by the applicant on which the certificate of title is issued. When the evidence of title presented by the applicant is a certificate of title or an assigned registration certificate issued by another state, the department shall notify the state of prior issuance that the certificate has been surrendered. If a certificate of title has not previously been issued for the motorboat in this state and the applicant is unable to provide such documentation, the applicant may apply for a bonded certificate of title as prescribed in section 37-1278.01.

(b) This subdivision applies beginning on an implementation date designated by the Director of Motor Vehicles. The director shall designate an implementation date which is on or before January 1, 2020. In addition to the information required under subdivision (2)(a) of this section, the application for a certificate of title shall contain (i) the full legal name as defined in section 60-468.01 of each owner and (ii)(A) the motor vehicle operator's license number or state identification card number of each owner, if applicable, and one or more of the identification elements as listed in section 60-484 of each owner, if applicable, and (B) if any owner is a business entity, a nonprofit organization, an estate, a trust, or a church-controlled organization, its tax identification number.

(3) The county treasurer shall use reasonable diligence in ascertaining whether or not the statements in the application for a certificate of title are true by checking the application and documents accompanying the same with the records of motorboats in his or her office. If he or she is satisfied that the applicant is the owner of the motorboat and that the application is in the proper form, the county treasurer shall issue a certificate of title over his or her signature and sealed with his or her seal.

(4) In the case of the sale of a motorboat, the certificate of title shall be obtained in the name of the purchaser upon application signed by the purchaser, except that for titles to be held by husband and wife, applications may be accepted by the county treasurer upon the signature of either spouse as a signature for himself or herself and as an agent for his or her spouse.

(5) In all cases of transfers of motorboats, the application for a certificate of title shall be filed within thirty days after the delivery of the motorboat. A dealer need not apply for a certificate of title for a motorboat in stock or acquired for

stock purposes, but upon transfer of a motorboat in stock or acquired for stock purposes, the dealer shall give the transferee a reassignment of the certificate of title on the motorboat or an assignment of a manufacturer's or importer's certificate. If all reassignments printed on the certificate of title have been used, the dealer shall obtain title in his or her name prior to any subsequent transfer.

**Source:** Laws 1994, LB 123, § 6; Laws 1996, LB 464, § 14; Laws 1997, LB 635, § 14; Laws 1997, LB 720, § 5; Laws 2000, LB 1317, § 1; Laws 2012, LB801, § 15; Laws 2015, LB642, § 2; Laws 2017, LB492, § 10.  
Effective date August 24, 2017.

**Cross References**

**Certificate of title**, negligent execution by government employee, see sections 13-910 and 81-8,219.

**37-1279 Certificate of title; issuance; form; county treasurer; duties; filing.**

(1) The county treasurer shall issue the certificate of title. The county treasurer shall sign and affix his or her seal to the original certificate of title and deliver the certificate to the applicant if there are no liens on the motorboat. If there are one or more liens on the motorboat, the certificate of title shall be handled as provided in section 37-1282. The county treasurer shall keep on hand a sufficient supply of blank forms which shall be furnished and distributed without charge to manufacturers, dealers, or other persons residing within the county, except that certificates of title shall only be issued by the county treasurer or the Department of Motor Vehicles. Each county shall issue and file certificates of title using the Vehicle Title and Registration System which shall be provided and maintained by the department.

(2) Each county treasurer of the various counties shall provide his or her seal without charge to the applicant on any certificate of title, application for certificate of title, duplicate copy, assignment or reassignment, power of attorney, statement, or affidavit pertaining to the issuance of a certificate of title. The department shall prescribe a uniform method of numbering certificates of title.

(3) The county treasurer shall (a) file all certificates of title according to rules and regulations of the department, (b) maintain in the office indices for such certificates of title, (c) be authorized to destroy all previous records five years after a subsequent transfer has been made on a motorboat, and (d) be authorized to destroy all certificates of title and all supporting records and documents which have been on file for a period of five years or more from the date of filing the certificate or a notation of lien, whichever occurs later.

**Source:** Laws 1994, LB 123, § 7; Laws 1996, LB 464, § 16; Laws 2009, LB202, § 4; Laws 2012, LB801, § 16; Laws 2017, LB263, § 4.  
Operative date August 24, 2017.

**Cross References**

**Certificate of title**, negligent execution by government employee, see sections 13-910 and 81-8,219.

**37-1283 New certificate; when issued; proof required; processing of application.**

(1) In the event of the transfer of ownership of a motorboat by operation of law as upon inheritance, devise, or bequest, order in bankruptcy, insolvency, replevin, or execution sale, (2) whenever a motorboat is sold to satisfy storage

or repair charges or under section 76-1607, or (3) whenever repossession is had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract, or other like agreement, and upon acceptance of an electronic certificate of title record after repossession, in addition to the title requirements in this section, the county treasurer of any county or the Department of Motor Vehicles, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof of ownership and right of possession to the motorboat, and upon payment of the fee prescribed in section 37-1287 and the presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto. If the prior certificate of title issued for the motorboat provided for joint ownership with right of survivorship, a new certificate of title shall be issued to a subsequent purchaser upon the assignment of the prior certificate of title by the surviving owner and presentation of satisfactory proof of death of the deceased owner. Only an affidavit by the person or agent of the person to whom possession of the motorboat has so passed, setting forth facts entitling him or her to such possession and ownership, together with a copy of the journal entry, court order, or instrument upon which such claim of possession and ownership is founded shall be considered satisfactory proof of ownership and right of possession, except that if the applicant cannot produce such proof of ownership, he or she may submit to the department such evidence as he or she may have and the department may thereupon, if it finds the evidence sufficient, issue the certificate of title or authorize any county treasurer to issue a certificate of title, as the case may be. If from the records of the county treasurer or the department there appear to be any liens on the motorboat, the certificate of title shall comply with section 37-1282 regarding the liens unless the application is accompanied by proper evidence of their satisfaction or extinction.

**Source:** Laws 1994, LB 123, § 11; Laws 1996, LB 464, § 19; Laws 2009, LB202, § 7; Laws 2012, LB751, § 2; Laws 2012, LB801, § 19; Laws 2017, LB263, § 5; Laws 2017, LB492, § 11.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB263, section 5, with LB492, section 11, to reflect all amendments.

**Note:** Changes made by LB492 became effective August 24, 2017. Changes made by LB263 became operative January 1, 2019.

#### Cross References

**Certificate of title**, negligent execution by government employee, see sections 13-910 and 81-8,219.

### **37-1285.01 Electronic certificate of title; changes authorized.**

Beginning January 1, 2019, if a motorboat certificate of title is an electronic certificate of title record, upon application by an owner or a lienholder and payment of the fee prescribed in section 37-1287, the following changes may be made to a certificate of title electronically and without printing a certificate of title:

- (1) Changing the name of an owner to reflect a legal change of name;
- (2) Removing the name of an owner with the consent of all owners and lienholders; or
- (3) Adding an additional owner with the consent of all owners and lienholders.

**Source:** Laws 2017, LB263, § 3.  
Operative date August 24, 2017.

**37-1287 Fees; disposition.**

(1) The county treasurers or the Department of Motor Vehicles shall charge a fee of six dollars for each certificate of title and a fee of three dollars for each notation of any lien on a certificate of title. The county treasurers shall retain for the county four dollars of the six dollars charged for each certificate of title and two dollars for each notation of lien. The remaining amount of the fee charged for the certificate of title and notation of lien under this subsection shall be remitted to the State Treasurer for credit to the General Fund.

(2) The county treasurers or the department shall charge a fee of ten dollars for each replacement or duplicate copy of a certificate of title, and the duplicate copy issued shall show only those unreleased liens of record. Such fees shall be remitted by the county or the department to the State Treasurer for credit to the General Fund.

(3) In addition to the fees prescribed in subsections (1) and (2) of this section, the county treasurers or the department shall charge a fee of four dollars for each certificate of title, each replacement or duplicate copy of a certificate of title, and each notation of lien on a certificate of title. The county treasurers or the department shall remit the fee charged under this subsection to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(4) The county treasurers shall remit fees due the State Treasurer under this section monthly and not later than the twentieth day of the month following collection. The county treasurers shall credit fees not due to the State Treasurer to their respective county general fund.

**Source:** Laws 1994, LB 123, § 15; Laws 1995, LB 467, § 1; Laws 1996, LB 464, § 23; Laws 2009, LB202, § 8; Laws 2011, LB135, § 1; Laws 2012, LB801, § 23; Laws 2017, LB263, § 6.  
Operative date January 1, 2019.

**ARTICLE 16****INTERSTATE WILDLIFE VIOLATOR COMPACT**

Section

37-1601. Interstate Wildlife Violator Compact.

**37-1601 Interstate Wildlife Violator Compact.**

The Legislature hereby adopts the Interstate Wildlife Violator Compact and enters into such compact with all states legally joining the compact in the form substantially as contained in this section.

## Article I

## Definitions

For purposes of the Interstate Wildlife Violator Compact:

(1) Citation means any summons, complaint, summons and complaint, ticket, penalty assessment, or other official document that is issued to a person by a wildlife officer or other peace officer for a wildlife violation and that contains an order requiring the person to respond;

(2) Collateral means any cash or other security deposited to secure an appearance for trial in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation;

(3) Compliance means, with respect to a citation, the act of answering a citation through an appearance in a court or tribunal, or through the payment of fines, costs, and surcharges, if any;

(4) Conviction means a conviction, including any court conviction, for any offense that is related to the preservation, protection, management, or restoration of wildlife and that is prohibited by state statute, law, regulation, commission order, ordinance, or administrative rule. The term also includes the forfeiture of any bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, the payment of a penalty assessment, a plea of nolo contendere, and the imposition of a deferred or suspended sentence by the court;

(5) Court means a court of law, including magistrate's court and the justice of the peace court, if any;

(6) Home state means the state of primary residence of a person;

(7) Issuing state means the participating state which issues a wildlife citation to the violator;

(8) License means any license, permit, or other public document that conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any wildlife regulated by statute, law, regulation, commission order, ordinance, or administrative rule of a participating state;

(9) Licensing authority means the Game and Parks Commission or the department or division within each participating state that is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife;

(10) Participating state means any state that enacts legislation to become a member of the Interstate Wildlife Violator Compact;

(11) Personal recognizance means an agreement by a person made at the time of issuance of the wildlife citation that such person will comply with the terms of the citation;

(12) State means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the provinces of Canada, and other countries;

(13) Suspension means any revocation, denial, or withdrawal of any or all license privileges, including the privilege to apply for, purchase, or exercise the benefits conferred by any license;

(14) Terms of the citation means those conditions and options expressly stated in the citation;

(15) Wildlife means all species of animals including mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as wildlife and are protected or otherwise regulated by statute, law, regulation, commission order, ordinance, or administrative rule in a participating state. Species included in the definition of wildlife for purposes of the Interstate Wildlife Violator Compact are based on state or local law;

(16) Wildlife law means the Game Law or any statute, law, regulation, commission order, ordinance, or administrative rule developed and enacted for the management of wildlife resources and the uses thereof;

(17) Wildlife officer means any conservation officer and any individual authorized by a participating state to issue a citation for a wildlife violation; and



(18) Wildlife violation means any cited violation of a statute, law, regulation, commission order, ordinance, or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

## Article II

### Procedures for Issuing State

When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a participating state in the same manner as though the person were a resident of the issuing state and may not require such person to post collateral to secure appearance if the officer receives the personal recognizance of such person that the person will comply with the terms of the citation.

Personal recognizance is acceptable:

- (1) If not prohibited by state or local law or the compact manual; and
- (2) If the violator provides adequate proof of identification to the wildlife officer.

Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the issuing state.

Upon receipt of the report of conviction or noncompliance, the licensing authority of the issuing state shall transmit such information to the licensing authority of the home state of the violator.

## Article III

### Procedures for Home State

Upon receipt of a report from the licensing authority of the issuing state reporting the failure of a violator to comply with the terms of a citation, the licensing authority of the home state shall notify the violator and may initiate a suspension action in accordance with the home state's suspension procedures and may suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards shall be accorded.

Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state may enter such conviction in its records and may treat such conviction as though it had occurred in the home state for the purposes of the suspension of license privileges if the violation resulting in such conviction could have been the basis for suspension of license privileges in the home state.

The licensing authority of the home state shall maintain a record of actions taken and shall make reports to issuing states.

## Article IV

### Reciprocal Recognition of Suspension

All participating states may recognize the suspension of license privileges of any person by any participating state as though the violation resulting in the suspension had occurred in their state and could have been the basis for suspension of license privileges in their state.

Each participating state shall communicate suspension information to other participating states.

## Article V

## Applicability of Other Laws

Except as expressly required by the Interstate Wildlife Violator Compact, nothing in the compact may be construed to affect the right of any participating state to apply any of its laws relating to license privileges to any person or circumstance or to invalidate or prevent any agreement or other cooperative arrangement between a participating state and a nonparticipating state concerning wildlife law enforcement.

## Article VI

## Withdrawal from Compact

A participating state may withdraw from participation in the Interstate Wildlife Violator Compact by enacting a statute repealing the compact and by official written notice to each participating state. Withdrawal shall not become effective until ninety days after the notice of withdrawal is given. The notice shall be directed to the compact administrator of each participating state. Withdrawal of any state does not affect the validity of the compact as to the remaining participating states.

## Article VII

## Construction and Severability

The Interstate Wildlife Violator Compact shall be liberally construed so as to effectuate its purposes. The provisions of the compact are severable, and if any phrase, clause, sentence, or provision of the compact is declared to be contrary to the constitution of any participating state or the United States, or the applicability thereof to any government, agency, individual, or circumstance is held invalid, the validity of the remainder of the compact is not affected thereby. If the compact is held contrary to the constitution of any participating state, the compact remains in full force and effect as to the remaining states and in full force and effect as to the participating state affected as to all severable matters.

## Article VIII

## Responsible State Entity

The Game and Parks Commission is authorized on behalf of the state to enter into the Interstate Wildlife Violator Compact. The commission shall enforce the compact and shall do all things within the jurisdiction of the commission that are appropriate in order to effectuate the purposes and the intent of the compact. The commission may adopt and promulgate rules and regulations necessary to carry out and consistent with the compact.

The commission may suspend the hunting, trapping, or fishing privileges of any resident of this state who has failed to comply with the terms of a citation issued for a wildlife violation in any participating state. The suspension shall remain in effect until the commission receives satisfactory evidence of compliance from the participating state. The commission shall send notice of the suspension to the resident, who shall surrender all current Nebraska hunting, trapping, or fishing licenses to the commission within ten days.

The resident may, within twenty days of the notice, request a review or hearing in accordance with section 37-618. Following the review or hearing,

the commission, through its authorized agent, may, based on the evidence, affirm, modify, or rescind the suspension of privileges.

**Source:** Laws 2017, LB566, § 1.

Effective date August 24, 2017.

**Cross References**

**Game Law**, see section 37-201.



## HEALTH OCCUPATIONS AND PROFESSIONS

# CHAPTER 38

## HEALTH OCCUPATIONS AND PROFESSIONS

### Article.

1. Uniform Credentialing Act. 38-101 to 38-1,125.
2. Advanced Practice Registered Nurse Practice Act. 38-208.
3. Alcohol and Drug Counseling Practice Act. 38-319.
4. Athletic Training Practice Act. 38-413.
5. Audiology and Speech-Language Pathology Practice Act. 38-517, 38-518.
6. Certified Nurse Midwifery Practice Act. 38-615.
7. Certified Registered Nurse Anesthetist Practice Act. 38-708.
8. Chiropractic Practice Act. 38-809.
10. Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. 38-1066 to 38-10,132.
11. Dentistry Practice Act. 38-1101 to 38-1152.
12. Emergency Medical Services Practice Act. 38-1217, 38-1218.
13. Environmental Health Specialists Practice Act. 38-1312.
14. Funeral Directing and Embalming Practice Act. 38-1421.
15. Hearing Instrument Specialists Practice Act. 38-1507 to 38-1516.
16. Licensed Practical Nurse-Certified Practice Act. Repealed.
17. Massage Therapy Practice Act. 38-1711, 38-1712.
18. Medical Nutrition Therapy Practice Act. 38-1814.
19. Medical Radiography Practice Act. 38-1917, 38-1917.02.
20. Medicine and Surgery Practice Act. 38-2028 to 38-2058.
21. Mental Health Practice Act. 38-2125, 38-2130.
22. Nurse Practice Act. 38-2201 to 38-2238.
23. Nurse Practitioner Practice Act. 38-2305 to 38-2322.
24. Nursing Home Administrator Practice Act. 38-2421.
25. Occupational Therapy Practice Act. 38-2517, 38-2523.
26. Optometry Practice Act. 38-2609.
27. Perfusion Practice Act. 38-2701 to 38-2712.
28. Pharmacy Practice Act. 38-2801 to 38-28,116.
29. Physical Therapy Practice Act. 38-2924.
31. Psychology Practice Act. 38-3120.
32. Respiratory Care Practice Act. 38-3212.
33. Veterinary Medicine and Surgery Practice Act. 38-3327.
34. Genetic Counseling Practice Act. 38-3419.
36. Interstate Medical Licensure Compact. 38-3601 to 38-3625.
37. Dialysis Patient Care Technician Registration Act. 38-3701 to 38-3707.

### ARTICLE 1

#### UNIFORM CREDENTIALING ACT

#### Section

- |            |  |
|------------|--|
| 38-101.    | Act, how cited.  |
| 38-105.    | Definitions, where found.  |
| 38-118.01. | Military spouse, defined.  |
| 38-121.    | Practices; credential required.  |
| 38-123.    | Record of credentials issued under act; department; duties; contents.  |
| 38-126.    | Rules and regulations; board and department; adopt.  |
| 38-129.01. | Temporary credential to military spouse; issuance; period valid.   |
| 38-186.    | Credential; discipline; petition by Attorney General; hearing; department; powers and duties.  |
| 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. |

## Section

38-1,125. Credential holder except pharmacist intern and pharmacy technician; incompetent, gross negligent, or unprofessional conduct; impaired or disabled person; duty to report.

**38-101 Act, how cited.**

Sections 38-101 to 38-1,142 and the following practice acts shall be known and may be cited as the Uniform Credentialing Act:

- (1) The Advanced Practice Registered Nurse Practice Act;
- (2) The Alcohol and Drug Counseling Practice Act;
- (3) The Athletic Training Practice Act;
- (4) The Audiology and Speech-Language Pathology Practice Act;
- (5) The Certified Nurse Midwifery Practice Act;
- (6) The Certified Registered Nurse Anesthetist Practice Act;
- (7) The Chiropractic Practice Act;
- (8) The Clinical Nurse Specialist Practice Act;
- (9) The Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;
- (10) The Dentistry Practice Act;
- (11) The Dialysis Patient Care Technician Registration Act;
- (12) The Emergency Medical Services Practice Act;
- (13) The Environmental Health Specialists Practice Act;
- (14) The Funeral Directing and Embalming Practice Act;
- (15) The Genetic Counseling Practice Act;
- (16) The Hearing Instrument Specialists Practice Act;
- (17) The Licensed Practical Nurse-Certified Practice Act until November 1, 2017;
- (18) The Massage Therapy Practice Act;
- (19) The Medical Nutrition Therapy Practice Act;
- (20) The Medical Radiography Practice Act;
- (21) The Medicine and Surgery Practice Act;
- (22) The Mental Health Practice Act;
- (23) The Nurse Practice Act;
- (24) The Nurse Practitioner Practice Act;
- (25) The Nursing Home Administrator Practice Act;
- (26) The Occupational Therapy Practice Act;
- (27) The Optometry Practice Act;
- (28) The Perfusion Practice Act;
- (29) The Pharmacy Practice Act;
- (30) The Physical Therapy Practice Act;
- (31) The Podiatry Practice Act;
- (32) The Psychology Practice Act;
- (33) The Respiratory Care Practice Act;

- (34) The Surgical First Assistant Practice Act;
- (35) The Veterinary Medicine and Surgery Practice Act; and
- (36) The Water Well Standards and Contractors' Practice Act.

If there is any conflict between any provision of sections 38-101 to 38-1,142 and any provision of a practice act, the provision of the practice act shall prevail.

The Revisor of Statutes shall assign the Uniform Credentialing Act, including the practice acts enumerated in subdivisions (1) through (35) of this section, to articles within Chapter 38.

**Source:** Laws 1927, c. 167, § 1, p. 454; C.S.1929, § 71-101; R.S.1943, § 71-101; Laws 1972, LB 1067, § 1; Laws 1984, LB 481, § 5; Laws 1986, LB 277, § 2; Laws 1986, LB 286, § 23; Laws 1986, LB 355, § 8; Laws 1986, LB 579, § 15; Laws 1986, LB 926, § 1; Laws 1987, LB 473, § 3; Laws 1988, LB 557, § 12; Laws 1988, LB 1100, § 4; Laws 1989, LB 323, § 2; Laws 1989, LB 344, § 4; Laws 1991, LB 456, § 4; Laws 1993, LB 48, § 1; Laws 1993, LB 187, § 3; Laws 1993, LB 429, § 1; Laws 1993, LB 536, § 43; Laws 1993, LB 669, § 2; Laws 1994, LB 900, § 1; Laws 1994, LB 1210, § 9; Laws 1994, LB 1223, § 2; Laws 1995, LB 406, § 10; Laws 1996, LB 1044, § 371; Laws 1997, LB 622, § 77; Laws 1999, LB 178, § 1; Laws 1999, LB 366, § 7; Laws 1999, LB 828, § 7; Laws 2001, LB 25, § 1; Laws 2001, LB 209, § 1; Laws 2001, LB 270, § 1; Laws 2001, LB 398, § 19; Laws 2002, LB 1021, § 4; Laws 2002, LB 1062, § 11; Laws 2003, LB 242, § 13; Laws 2004, LB 1005, § 8; Laws 2004, LB 1083, § 103; Laws 2005, LB 306, § 1; Laws 2006, LB 994, § 79; R.S.Supp.,2006, § 71-101; Laws 2007, LB236, § 1; Laws 2007, LB247, § 23; Laws 2007, LB247, § 58; Laws 2007, LB296, § 296; Laws 2007, LB463, § 1; Laws 2007, LB481, § 1; Laws 2008, LB928, § 2; Laws 2009, LB195, § 5; Laws 2012, LB831, § 26; Laws 2015, LB264, § 1; Laws 2016, LB721, § 18; Laws 2016, LB750, § 1; Laws 2017, LB88, § 28; Laws 2017, LB255, § 8; Laws 2017, LB417, § 3.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB88, section 28, with LB255, section 8, and LB417, section 3, to reflect all amendments.

**Note:** Changes made by LB88 became operative April 26, 2017. Changes made by LB255 became effective May 11, 2017. Changes made by LB417 became effective August 24, 2017.

#### Cross References

**Advanced Practice Registered Nurse Practice Act**, see section 38-201.  
**Alcohol and Drug Counseling Practice Act**, see section 38-301.  
**Athletic Training Practice Act**, see section 38-401.  
**Audiology and Speech-Language Pathology Practice Act**, see section 38-501.  
**Certified Nurse Midwifery Practice Act**, see section 38-601.  
**Certified Registered Nurse Anesthetist Practice Act**, see section 38-701.  
**Chiropractic Practice Act**, see section 38-801.  
**Clinical Nurse Specialist Practice Act**, see section 38-901.  
**Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act**, see section 38-1001.  
**Dentistry Practice Act**, see section 38-1101.  
**Dialysis Patient Care Technician Registration Act**, see section 38-701.  
**Emergency Medical Services Practice Act**, see section 38-1201.  
**Environmental Health Specialists Practice Act**, see section 38-1301.  
**Funeral Directing and Embalming Practice Act**, see section 38-1401.  
**Genetic Counseling Practice Act**, see section 38-3401.  
**Hearing Instrument Specialists Practice Act**, see section 38-1501.  
**Licensed Practical Nurse-Certified Practice Act**, see section 38-1601.  
**Massage Therapy Practice Act**, see section 38-1701.  
**Medical Nutrition Therapy Practice Act**, see section 38-1801.  
**Medical Radiography Practice Act**, see section 38-1901.  
**Medicine and Surgery Practice Act**, see section 38-2001.

**Mental Health Practice Act**, see section 38-2101.  
**Nurse Practice Act**, see section 38-2201.  
**Nurse Practitioner Practice Act**, see section 38-2301.  
**Nursing Home Administrator Practice Act**, see section 38-2401.  
**Occupational Therapy Practice Act**, see section 38-2501.  
**Optometry Practice Act**, see section 38-2601.  
**Perfusion Practice Act**, see section 38-2701.  
**Pharmacy Practice Act**, see section 38-2801.  
**Physical Therapy Practice Act**, see section 38-2901.  
**Podiatry Practice Act**, see section 38-3001.  
**Psychology Practice Act**, see section 38-3101.  
**Respiratory Care Practice Act**, see section 38-3201.  
**Surgical First Assistant Practice Act**, see section 38-3501.  
**Veterinary Medicine and Surgery Practice Act**, see section 38-3301.  
**Water Well Standards and Contractors' Practice Act**, see section 46-1201.

### **38-105 Definitions, where found.**

For purposes of the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-106 to 38-120 apply.

**Source:** Laws 2007, LB463, § 5; Laws 2017, LB88, § 29.  
Operative date April 26, 2017.

### **38-118.01 Military spouse, defined.**

Military spouse means the spouse of an officer or enlisted person on active duty in the armed forces of the United States.

**Source:** Laws 2017, LB88, § 30.  
Operative date April 26, 2017.

### **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) Genetic counseling;
- (r) Hearing instrument dispensing and fitting;
- (s) Lead-based paint abatement, inspection, project design, and training;



- (t) Licensed practical nurse-certified until November 1, 2017;
- (u) Massage therapy;
- (v) Medical nutrition therapy;
- (w) Medical radiography;
- (x) Medicine and surgery;
- (y) Mental health practice;
- (z) Nail technology;
- (aa) Nursing;
- (bb) Nursing home administration;
- (cc) Occupational therapy;
- (dd) Optometry;
- (ee) Osteopathy;
- (ff) Perfusion;
- (gg) Pharmacy;
- (hh) Physical therapy;
- (ii) Podiatry;
- (jj) Psychology;
- (kk) Radon detection, measurement, and mitigation;
- (ll) Respiratory care;
- (mm) Surgical assisting;
- (nn) Veterinary medicine and surgery;
- (oo) Public water system operation; and
- (pp) 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;
- (d) Social worker; or
- (e) Dialysis patient care technician.

(3) No business shall operate for the provision of any of the following services unless such business has obtained a credential under the Uniform Credentialing Act:

- (a) Body art;
- (b) Cosmetology;
- (c) Emergency medical services;
- (d) Esthetics;
- (e) Funeral directing and embalming;
- (f) Massage therapy; or

(g) Nail technology.

**Source:** Laws 1927, c. 167, § 2, p. 455; C.S.1929, § 71-201; Laws 1935, c. 142, § 27, p. 529; C.S.Supp.,1941, § 71-201; R.S.1943, § 71-102; Laws 1957, c. 298, § 5, p. 1076; Laws 1961, c. 337, § 3, p. 1051; Laws 1971, LB 587, § 1; Laws 1978, LB 406, § 1; Laws 1980, LB 94, § 2; Laws 1984, LB 481, § 6; Laws 1985, LB 129, § 1; Laws 1986, LB 277, § 3; Laws 1986, LB 286, § 24; Laws 1986, LB 355, § 9; Laws 1986, LB 579, § 16; Laws 1988, LB 557, § 13; Laws 1988, LB 1100, § 5; Laws 1989, LB 342, § 4; Laws 1993, LB 669, § 3; Laws 1995, LB 406, § 11; Laws 1996, LB 1044, § 372; Laws 2001, LB 270, § 2; Laws 2004, LB 1083, § 104; R.S.Supp.,2006, § 71-102; Laws 2007, LB236, § 2; Laws 2007, LB247, § 59; Laws 2007, LB296, § 297; Laws 2007, LB463, § 21; Laws 2009, LB195, § 6; Laws 2012, LB831, § 27; Laws 2016, LB721, § 19; Laws 2017, LB88, § 31; Laws 2017, LB255, § 9.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB88, section 31, with LB255, section 9, to reflect all amendments.

**Note:** Changes made by LB88 became operative April 26, 2017. Changes made by LB255 became effective May 11, 2017.

### **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) Except as otherwise specifically provided, 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 sending a notice to such applicant or credential holder at his or her last address of record.

**Source:** Laws 2007, LB463, § 23; Laws 2017, LB417, § 4.  
Effective date August 24, 2017.

**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, specify methods to meet the minimum standards through military service as provided in section 38-1,141, and on or before December 15, 2017, specify standards and procedures for issuance of temporary credentials for military spouses as provided in section 38-129.01;
  - (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; Laws 2015, LB264, § 2; Laws 2017, LB88, § 32.  
Operative date April 26, 2017.

**38-129.01 Temporary credential to military spouse; issuance; period valid.**

(1) The department, with the recommendation of the appropriate board, shall issue a temporary credential to a military spouse who complies with and meets the requirements of this section pending issuance of the applicable credential under the Uniform Credentialing Act. This section shall not apply to a license to practice dentistry, including a temporary license under section 38-1123.

(2) A military spouse shall submit the following with his or her application for the applicable credential:

(a) A copy of his or her military dependent identification card which identifies him or her as the spouse of an active duty member of the United States Armed Forces;

(b) A copy of his or her spouse's military orders reflecting an active-duty assignment in Nebraska;

(c) A copy of his or her credential from another jurisdiction and the applicable statutes, rules, and regulations governing the credential;

(d) A copy of his or her fingerprints for a criminal background check if required under section 38-131; and

(e) The fees required pursuant to sections 38-151 to 38-157 for the application for the credential and for the temporary credential.

(3) If the department, with the recommendation of the appropriate board, determines that the applicant is a resident of Nebraska, is the spouse of an active duty member of the United States Armed Forces who is assigned to a duty station in Nebraska, holds a valid credential in another jurisdiction which has similar standards for the profession to the Uniform Credentialing Act and the rules and regulations adopted and promulgated under the act, has submitted fingerprints for a criminal background check if required under section 38-131, and has paid the applicable fees pursuant to sections 38-151 to 38-157, the department shall issue a temporary credential to the applicant.

(4) A temporary credential issued under this section shall be valid until the application for the regular credential is approved or rejected, not to exceed one year.

**Source:** Laws 2017, LB88, § 33.  
Operative date April 26, 2017.

**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 (19) and (21) through (35) 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; Laws 2012, LB831, § 28; Laws 2017, LB88, § 34; Laws 2017, LB255, § 10.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB88, section 34, with LB255, section 10, to reflect all amendments.

**Note:** Changes made by LB88 became operative April 26, 2017. Changes made by LB255 became effective May 11, 2017.

**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 director, with the recommendation of 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. This subsection shall not apply to pharmacist interns or pharmacy technicians.

**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; Laws 2016, LB859, § 2; Laws 2017, LB166, § 7.  
Effective date April 28, 2017.

**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) Except as otherwise provided in section 38-2897, every credential holder 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; Laws 2017, LB166, § 8.  
Effective date April 28, 2017.

**ARTICLE 2**

**ADVANCED PRACTICE REGISTERED NURSE PRACTICE ACT**

Section  
38-208. License; qualifications; military spouse; temporary license.

**38-208 License; qualifications; military spouse; temporary license.**

(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.

(4) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 2005, LB 256, § 42; R.S.Supp.,2006, § 71-17,137; Laws 2007, LB185, § 38; Laws 2007, LB463, § 147; Laws 2017, LB88, § 35.

Operative date April 26, 2017.

**Cross References**

- 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.
- Credentialing, general requirements and issuance procedures, see section 38-121 et seq.
- Nurse Licensure Compact, see sections 71-1795 to 71-1795.02.
- Nurse Practice Act, see section 38-2201.
- Nurse Practitioner Practice Act, see section 38-2301.

**ARTICLE 3**

**ALCOHOL AND DRUG COUNSELING PRACTICE ACT**

Section 38-319. Reciprocity; military spouse; temporary license.



**38-319 Reciprocity; military spouse; temporary license.**

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. An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 2007, LB463, § 170; Laws 2017, LB88, § 36.  
Operative date April 26, 2017.

**ARTICLE 4**

**ATHLETIC TRAINING PRACTICE ACT**

Section

38-413. Reciprocity; continuing competency requirements; military spouse; temporary license.

**38-413 Reciprocity; continuing competency requirements; military spouse; temporary license.**

(1) 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.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 2007, LB463, § 185; Laws 2017, LB88, § 37.  
Operative date April 26, 2017.

**ARTICLE 5**

**AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY PRACTICE ACT**

Section

38-517. Reciprocity; continuing competency requirements; military spouse; temporary license.

38-518. Practice of audiology or speech-language pathology; temporary license; granted; when.

**38-517 Reciprocity; continuing competency requirements; military spouse; temporary license.**

(1) 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.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 2007, LB463, § 202; Laws 2017, LB88, § 38.  
Operative date April 26, 2017.

**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 (1) to military spouses as provided in section 38-129.01 or (2) to persons who establish residence in Nebraska and (a) 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 (b) 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; Laws 2017, LB88, § 39.  
Operative date April 26, 2017.

**ARTICLE 6****CERTIFIED NURSE MIDWIFERY PRACTICE ACT**

## Section

38-615. Licensure as nurse midwife; application; requirements; temporary licensure.

**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 subsection may be extended for up to one year with the approval of the board.

(3) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

(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; Laws 2017, LB88, § 40.

Operative date April 26, 2017.

**Cross References**

**Advanced Practice Registered Nurse Practice Act**, see section 38-201.

**Credentialing**, general requirements and issuance procedures, see section 38-121 et seq.

**Nurse Licensure Compact**, see sections 71-1795 to 71-1795.02.

**ARTICLE 7**

**CERTIFIED REGISTERED NURSE ANESTHETIST PRACTICE ACT**

Section

38-708. Certified registered nurse anesthetist; temporary license; permit.

**38-708 Certified registered nurse anesthetist; temporary license; permit.**

(1) 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 (a) to graduates of an accredited school of nurse anesthesia pending results of the first certifying examination following graduation and (b) 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 subsection may be extended at the discretion of the board with the approval of the department.

(2) An applicant for a license to practice as a certified registered nurse anesthetist who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**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; Laws 2017, LB88, § 41.

Operative date April 26, 2017.

**ARTICLE 8**

**CHIROPRACTIC PRACTICE ACT**

Section

38-809. Reciprocity; continuing competency requirements; military spouse; temporary license.

**38-809 Reciprocity; continuing competency requirements; military spouse; temporary license.**

(1) 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.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**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; Laws 2017, LB88, § 42.  
Operative date April 26, 2017.

#### ARTICLE 10

### COSMETOLOGY, ELECTROLOGY, ESTHETICS, NAIL TECHNOLOGY, AND BODY ART PRACTICE ACT

#### Section

- 38-1066. Reciprocity; requirements; military spouse; temporary license.  
38-1067. Foreign-trained applicants; examination requirements.  
38-1070. Registration; temporary license; general requirements.  
38-10,132. Nail technician or instructor; reciprocity; requirements; military spouse; temporary license.

#### **38-1066 Reciprocity; requirements; military spouse; temporary license.**

(1) 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:

(a) 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;

(b) 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

(c) 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:

(i) 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;

(ii) 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;

(iii) 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;

(iv) 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

(v) 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.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01 and may practice under the temporary license without supervision.

**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; Laws 2017, LB88, § 43.  
Operative date April 26, 2017.

### **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 except as provided in section 38-129.01. 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; Laws 2017, LB88, § 44.  
Operative date April 26, 2017.

### **38-1070 Registration; temporary license; general requirements.**

An individual making application for registration or a temporary license, other than a temporary license issued as provided in section 38-129.01, 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; Laws 2017, LB88, § 45.  
Operative date April 26, 2017.

**38-10,132 Nail technician or instructor; reciprocity; requirements; military spouse; temporary license.**

(1) 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:

- (a) He or she has attained the age of seventeen years;
- (b) He or she has completed formal education equivalent to a United States high school education;
- (c) 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;
- (d) For licensure as a nail technician, evidence of:
  - (i) 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
  - (ii) At least twelve months of practice as a nail technician following issuance of such license in another jurisdiction; and
- (e) For licensure as a nail technology instructor, evidence of:
  - (i) 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
  - (ii) At least twelve months of practice as a nail technology instructor following issuance of such license in another jurisdiction.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 1999, LB 68, § 39; R.S.1943, (2003), § 71-3,191; Laws 2007, LB463, § 394; Laws 2017, LB88, § 46.  
Operative date April 26, 2017.

**ARTICLE 11  
DENTISTRY PRACTICE ACT**

Section	
38-1101.	Act, how cited.
38-1102.	Definitions, where found.
38-1102.01.	Accredited dental assisting program, defined.
38-1107.	Dental assistant, defined.
38-1107.01.	Expanded function dental assistant, defined.
38-1107.02.	Expanded function dental hygienist, defined.
38-1111.01.	Licensed dental assistant, defined.
38-1111.02.	Licensed dental hygienist, defined.
38-1116.	Dentistry practice; exceptions.
38-1118.01.	Expanded function dental hygiene; application for permit; qualifications.

- Section
- 38-1118.02. Licensed dental assistant; application for license; qualifications.
  - 38-1118.03. Expanded function dental assistant; application for permit; qualifications.
  - 38-1119. Reexamination; requirements.
  - 38-1121. Dental hygienist; licensed dental assistant; reciprocity; requirements; military license; temporary license.
  - 38-1127.01. Expanded function dental assistant; expanded function dental hygienist; display of permit.
  - 38-1130. Licensed dental hygienist; functions authorized; when; department; duties; Health and Human Services Committee; report.
  - 38-1131. Licensed dental hygienist; procedures and functions authorized; enumerated.
  - 38-1132. Licensed dental hygienist; activities related to analgesia authorized; administer local anesthesia; when.
  - 38-1135. Dental assistants, licensed dental assistants, and expanded function dental assistants; employment; duties performed; rules and regulations.
  - 38-1136. Licensed dental hygienists and expanded function dental hygienists; employment authorized; performance of duties; rules and regulations; license or permit required.
  - 38-1136.01. Licensed dental assistant; additional functions, procedures, and services.
  - 38-1152. Expanded function dental hygienist; authorized activities.

**38-1101 Act, how cited.**

Sections 38-1101 to 38-1152 shall be known and may be cited as the Dentistry Practice Act.

**Source:** Laws 2007, LB463, § 434; Laws 2015, LB80, § 1; Laws 2017, LB18, § 1.  
Operative date January 1, 2018.

**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 38-1102.01 to 38-1113 apply.

**Source:** Laws 2007, LB463, § 435; Laws 2015, LB80, § 2; Laws 2017, LB18, § 2.  
Operative date January 1, 2018.

**38-1102.01 Accredited dental assisting program, defined.**

Accredited dental assisting 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 assisting curriculum of not less than one academic year.

**Source:** Laws 2017, LB18, § 3.  
Operative date January 1, 2018.

**38-1107 Dental assistant, defined.**

Dental assistant means a person who does not hold a license under the Dentistry Practice Act and who is employed for the purpose of assisting a licensed dentist in the performance of his or her clinical and clinical-related duties as described in section 38-1135.

**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; Laws 2017, LB18, § 4.  
Operative date January 1, 2018.

**38-1107.01 Expanded function dental assistant, defined.**

Expanded function dental assistant means a licensed dental assistant who has met the requirements to practice as an expanded function dental assistant pursuant to section 38-1118.03.

**Source:** Laws 2017, LB18, § 6.  
Operative date January 1, 2018.

**38-1107.02 Expanded function dental hygienist, defined.**

Expanded function dental hygienist means a licensed dental hygienist who has met the requirements to practice as an expanded function dental hygienist pursuant to section 38-1118.01.

**Source:** Laws 2017, LB18, § 8.  
Operative date January 1, 2018.

**38-1111.01 Licensed dental assistant, defined.**

Licensed dental assistant means a dental assistant who holds a license to practice as a dental assistant under the Dentistry Practice Act.

**Source:** Laws 2017, LB18, § 5.  
Operative date January 1, 2018.

**38-1111.02 Licensed dental hygienist, defined.**

Licensed dental hygienist means a person who holds a license to practice dental hygiene under the Dentistry Practice Act.

**Source:** Laws 2017, LB18, § 7.  
Operative date January 1, 2018.

**38-1116 Dentistry practice; exceptions.**

The Dentistry Practice Act shall not require licensure as a dentist under the act for:

(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, under the supervision of a licensed dentist, by a dental assistant, a licensed dental assistant, or an expanded function dental assistant, of duties prescribed in accordance with rules and regulations adopted by the department;

(9) The performance by a licensed dental hygienist or an expanded function 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;

(12) Dental hygiene students who practice dental hygiene or expanded function 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 or expanded function dental hygiene; or

(13) Dental assisting students who practice dental assisting or expanded function dental assisting upon patients in clinics in the regular course of instruction at an accredited dental assisting program. Such dental assisting students are also not engaged in the unauthorized practice of dental assisting, expanded function dental assisting, dental hygiene, or expanded function 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; Laws 2017, LB18, § 9.

Operative date January 1, 2018.

**38-1118.01 Expanded function dental hygiene; application for permit; qualifications.**

(1) Every applicant for a permit to practice expanded function dental hygiene shall (a) present proof of current, valid licensure under the Dentistry Practice Act as a licensed dental hygienist at the time of application, (b) present proof of at least one thousand five hundred hours of experience as a licensed dental hygienist, (c) present proof of successful completion of courses and examinations in expanded function dental hygiene approved by the board, (d) pass a jurisprudence examination approved by the board that is based on the Nebraska statutes, rules, and regulations governing the practice of expanded function dental hygiene, and (e) complete continuing education as a condition of the permit if required by the board.

(2) Upon completion of these requirements, the department, with the recommendation of the board, shall issue the applicant the applicable permit to practice expanded function dental hygiene.

**Source:** Laws 2017, LB18, § 10.

Operative date January 1, 2018.

**38-1118.02 Licensed dental assistant; application for license; qualifications.**

(1) Every applicant for a license to practice as a licensed dental assistant shall (a) have a high school diploma or its equivalent, (b) present proof of (i) graduation from an accredited dental assisting program or (ii) a minimum of one thousand five hundred hours of experience as a dental assistant during the five-year period prior to the application for a license, (c) pass the examination to become a certified dental assistant administered by the Dental Assisting National Board or an equivalent examination approved by the Board of Dentistry, (d) pass a jurisprudence examination approved by the board that is based on the Nebraska statutes, rules, and regulations governing the practice of dental assisting, and (e) complete continuing education 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 as a licensed dental assistant.

**Source:** Laws 2017, LB18, § 11.

Operative date January 1, 2018.

**38-1118.03 Expanded function dental assistant; application for permit; qualifications.**

(1) Every applicant for a permit to practice as an expanded function dental assistant shall (a) present proof of current, valid licensure under the Dentistry Practice Act as a licensed dental assistant at the time of application, (b) present proof of at least one thousand five hundred hours of experience as a licensed dental assistant, (c) present proof of successful completion of courses and examinations in expanded function dental assisting approved by the board, (d) pass a jurisprudence examination approved by the board that is based on the Nebraska statutes, rules, and regulations governing the practice of expanded

function dental assisting, and (e) complete continuing education as a condition of the permit if required by the board.

(2) Upon completion of these requirements, the department, with the recommendation of the board, shall issue the applicant the applicable permit to practice as an expanded function dental assistant.

**Source:** Laws 2017, LB18, § 12.  
Operative date January 1, 2018.

**38-1119 Reexamination; requirements.**

Any person who applies for a license to practice dentistry, dental hygiene, or dental assisting 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, dental hygiene, or dental assisting 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, dental hygiene, or dental assisting in the State of Nebraska.

**Source:** Laws 2007, LB463, § 452; Laws 2017, LB18, § 13.  
Operative date January 1, 2018.

**38-1121 Dental hygienist; licensed dental assistant; reciprocity; requirements; military license; temporary license.**

(1) 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.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

(3) Every applicant for a license to practice as a licensed dental assistant 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 practice as a licensed dental assistant 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 assisting program for the purpose of completing a postgraduate or residency program in dental assisting also serves as active practice toward meeting this requirement.

**Source:** Laws 2007, LB463, § 454; Laws 2017, LB18, § 14; Laws 2017, LB88, § 47.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB18, section 14, with LB88, section 47, to reflect all amendments.

**Note:** Changes made by LB88 became operative April 26, 2017. Changes made by LB18 became operative January 1, 2018.

**38-1127.01 Expanded function dental assistant; expanded function dental hygienist; display of permit.**

Every person who owns, operates, or controls a facility in which an expanded function dental assistant or an expanded function dental hygienist is practicing shall display the permit of such person issued by the board for expanded functions in a conspicuous place in such facility.

**Source:** Laws 2017, LB18, § 15.

Operative date January 1, 2018.

**38-1130 Licensed dental hygienist; functions authorized; when; department; duties; Health and Human Services Committee; report.**

(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 in-service training sessions on dental health; and all of the duties that a dental assistant who is not licensed is authorized to perform.

(3)(a) The department may authorize a licensed dental hygienist to perform the following functions in the conduct of public health-related services to children in a public health setting or in a health care or related facility:

(i) Oral prophylaxis to healthy children who do not require antibiotic premedication;

(ii) Pulp vitality testing;

(iii) Preventive measures, including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease;

(iv) Upon completion of education and testing approved by the board, interim therapeutic restoration technique; and

(v) Upon completion of education and testing approved by the board, writing prescriptions for mouth rinses and fluoride products that help decrease risk for tooth decay.

(b) Authorization shall be granted by the department under this subsection upon (i) filing an application with the department and (ii) providing evidence of current licensure and professional liability insurance coverage. 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 licensed 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 on a form developed and provided by 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)(a) The department may authorize a licensed dental hygienist who has completed three thousand hours of clinical experience to perform the following functions in the conduct of public health-related services to adults in a public health setting or in a health care or related facility:

- (i) Oral prophylaxis;
- (ii) Pulp vitality testing;
- (iii) Preventive measures, including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease;
- (iv) Upon completion of education and testing approved by the board, interim therapeutic restoration technique;
- (v) Upon completion of education and testing approved by the board, writing prescriptions for mouth rinses and fluoride products that help decrease risk for tooth decay; and
- (vi) Upon completion of education and testing approved by the board, minor denture adjustments.

(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 three thousand hours of clinical experience. 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 licensed dental hygienist's license.

(c) A licensed dental hygienist performing dental hygiene functions as authorized under this subsection shall (i) report on a form developed and provided by the department 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.

(5) The department shall compile the data from the reports provided under subdivisions (3)(c)(i) and (4)(c)(i) of this section and provide an annual report to the Board of Dentistry and the State Board of Health.

(6) 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.

(7) Within five years after September 6, 2013, the Health and Human Services Committee of the Legislature shall evaluate the services provided by licensed dental hygienists pursuant to this section to ascertain the effectiveness of such services in the delivery of oral health care and shall provide a report on such evaluation to the Legislature. The report submitted to the Legislature shall be submitted electronically.

**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; Laws 2013, LB484, § 1; Laws 2017, LB18, § 16.  
Operative date January 1, 2018.

**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;
- (14) Upon completion of education and testing approved by the board, interim therapeutic restoration technique; and
- (15) All of the duties that a dental assistant who is not licensed is authorized to perform.

Upon completion of education and testing approved by the board and when authorized by and under the general supervision of a licensed dentist, a licensed dental hygienist may write prescriptions for mouth rinses and fluoride products that help decrease the risk for tooth decay.

**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; Laws 2017, LB18, § 17.  
Operative date January 1, 2018.

**38-1132 Licensed dental hygienist; activities related to analgesia authorized; administer local anesthesia; when.**

(1)(a) A licensed dental hygienist may monitor nitrous oxide analgesia under the indirect supervision of a licensed dentist.

(b) Upon completion of education and testing approved by the board, a licensed dental hygienist may administer and titrate 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 licensed dental 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; Laws 2017, LB18, § 18.

Operative date January 1, 2018.

**38-1135 Dental assistants, licensed dental assistants, and expanded function dental assistants; employment; duties performed; rules and regulations.**

(1) Any licensed dentist, public institution, or school may employ dental assistants, licensed dental assistants, and expanded function dental assistants. Such dental assistants, under the supervision of a licensed dentist, may perform such duties as are prescribed in the Dentistry Practice Act in accordance with rules and regulations adopted and promulgated by the department, with the recommendation of the board.

(2) The department, with the recommendation of the board, shall adopt and promulgate rules and regulations pursuant to section 38-126 governing the performance of duties by dental assistants, licensed dental assistants, and expanded function dental assistants. The rules and regulations shall include the

degree of supervision which must be provided by a licensed dentist and the education and proof of competency requirements that must be met for any procedures performed by a dental assistant, a licensed dental assistant, or an expanded function dental assistant.

(3) A dental assistant may perform duties delegated by a licensed dentist for the purpose of assisting the licensed dentist in the performance of the dentist's clinical and clinical-related duties as allowed in the rules and regulations adopted and promulgated under the Dentistry Practice Act.

(4) Under the indirect supervision of a licensed dentist, a dental assistant may (a) monitor nitrous oxide if the dental assistant has current and valid certification for cardiopulmonary resuscitation approved by the board and (b) place topical local anesthesia.

(5) Upon completion of education and testing approved by the board, a dental assistant may:

(a) Take X-rays under the general supervision of a licensed dentist; and

(b) Perform coronal polishing under the indirect supervision of a licensed dentist.

(6) A licensed dental assistant may perform all procedures authorized for a dental assistant. Upon completion of education and testing approved by the board and with a permit from the department for the respective competency, a licensed dental assistant may, under the indirect supervision of a licensed dentist, (a) take dental impressions for fixed prostheses, (b) take dental impressions and make minor adjustments for removable prostheses, (c) cement prefabricated fixed prostheses on primary teeth, and (d) monitor and administer nitrous oxide analgesia.

(7) Upon completion of education and testing approved by the board and with a permit from the department for the respective competency, an expanded function dental assistant may, under the indirect supervision of a licensed dentist, place (a) restorative level one simple restorations (one surface) and (b) restorative level two complex restorations (multiple surfaces).

(8) A dental assistant may be a graduate of an accredited dental assisting program or may be trained on the job.

(9) No person shall practice as a licensed dental assistant in this state unless he or she holds a license as a licensed dental assistant under the Dentistry Practice Act.

(10) No person shall practice as an expanded function dental assistant in this state unless he or she holds a permit as an expanded function dental assistant under the act.

(11) A licensed dentist shall only delegate duties to a dental assistant, a licensed dental assistant, or an expanded function dental assistant in accordance with rules and regulations adopted and promulgated pursuant to the Dentistry Practice Act. The licensed dentist supervising a dental assistant, a licensed dental assistant, or an expanded function dental assistant shall be responsible for patient care for each patient regardless of whether the patient care is rendered personally by the dentist or by a dental assistant, a licensed dental assistant, or an expanded function dental assistant.

**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; Laws 2017, LB18, § 20.  
Operative date January 1, 2018.

**38-1136 Licensed dental hygienists and expanded function dental hygienists; employment authorized; performance of duties; rules and regulations; license or permit required.**

(1) Any licensed dentist, public institution, or school may employ licensed dental hygienists and expanded function dental hygienists.

(2) 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 expanded function dental hygienists. The rules and regulations shall include the degree of supervision which must be provided by a licensed dentist and the education and proof of competency requirements that must be met for any procedures performed by a licensed dental hygienist or an expanded function dental hygienist.

(3) No person shall practice dental hygiene in this state unless he or she holds a license as a licensed dental hygienist under the Dentistry Practice Act.

(4) No person shall practice expanded function dental hygiene in this state unless he or she holds a permit as an expanded function dental hygienist under the act.

(5) A licensed dentist shall only delegate duties to a licensed dental hygienist or an expanded function dental hygienist in accordance with rules and regulations adopted and promulgated pursuant to the Dentistry Practice Act. The licensed dentist supervising a licensed dental hygienist or an expanded function dental hygienist shall be responsible for patient care for each patient regardless of whether the patient care is rendered personally by the dentist or by a licensed dental hygienist or an expanded function dental hygienist.

**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; Laws 2017, LB18, § 21.  
Operative date January 1, 2018.

**38-1136.01 Licensed dental assistant; additional functions, procedures, and services.**

The department, with the recommendation of the board, may, by rule and regulation, prescribe functions, procedures, and services in addition to those in section 38-1135 which may be performed by a licensed dental assistant under the supervision of a licensed dentist when intended to attain or maintain optimal oral health.

**Source:** Laws 2017, LB18, § 19.  
Operative date January 1, 2018.

**38-1152 Expanded function dental hygienist; authorized activities.**

An expanded function dental hygienist may perform all the procedures authorized for a licensed dental hygienist. Upon completion of education and testing approved by the board and with a permit from the department for the respective competency, an expanded function dental hygienist may, under the indirect supervision of a licensed dentist, place (1) restorative level one simple

restorations (one surface) and (2) restorative level two complex restorations (multiple surfaces).

**Source:** Laws 2017, LB18, § 22.

Operative date January 1, 2018.

## ARTICLE 12

### EMERGENCY MEDICAL SERVICES PRACTICE ACT

#### Section

38-1217. Rules and regulations.

38-1218. Licensure classification; military spouse; temporary license.

#### **38-1217 Rules and regulations.**

The board shall adopt rules and regulations necessary to:

(1)(a) For licenses issued prior to September 1, 2010, create the following licensure classifications of out-of-hospital emergency care providers: (i) First responder; (ii) emergency medical technician; (iii) emergency medical technician-intermediate; and (iv) emergency medical technician-paramedic; and (b) for licenses issued on or after September 1, 2010, create the following licensure classifications of out-of-hospital emergency care providers: (i) Emergency medical responder; (ii) emergency medical technician; (iii) advanced emergency medical technician; and (iv) paramedic. The rules and regulations creating the classifications shall include the practices and procedures authorized for each classification, training and testing requirements, renewal and reinstatement requirements, and other criteria and qualifications for each classification determined to be necessary for protection of public health and safety. A person holding a license issued prior to September 1, 2010, shall be authorized to practice in accordance with the laws, rules, and regulations governing the license for the term of the license;

(2) Provide for temporary licensure of an out-of-hospital emergency care provider who has completed the educational requirements for a licensure classification enumerated in subdivision (1)(b) of this section but has not completed the testing requirements for licensure under such subdivision. Such temporary licensure shall be valid for one year or until a license is issued under such subdivision and shall not be subject to renewal. The rules and regulations shall include qualifications and training necessary for issuance of such temporary license, the practices and procedures authorized for a temporary licensee under this subdivision, and supervision required for a temporary licensee under this subdivision. The requirements of this subdivision and the rules and regulations adopted and promulgated pursuant to this subdivision do not apply to a temporary license issued as provided in section 38-129.01;

(3) Set standards for the licensure of basic life support services and advanced life support services. The rules and regulations providing for licensure shall include standards and requirements for: Vehicles, equipment, maintenance, sanitation, inspections, personnel, training, medical direction, records maintenance, practices and procedures to be provided by employees or members of each classification of service, and other criteria for licensure established by the board;

(4) Authorize emergency medical services to provide differing practices and procedures depending upon the qualifications of out-of-hospital emergency care providers available at the time of service delivery. No emergency medical

service shall be licensed to provide practices or procedures without the use of personnel licensed to provide the practices or procedures;

(5) Authorize out-of-hospital emergency care providers to perform any practice or procedure which they are authorized to perform with an emergency medical service other than the service with which they are affiliated when requested by the other service and when the patient for whom they are to render services is in danger of loss of life;

(6) Provide for the approval of training agencies and establish minimum standards for services provided by training agencies;

(7) Provide for the minimum qualifications of a physician medical director in addition to the licensure required by section 38-1212;

(8) Provide for the use of physician medical directors, qualified physician surrogates, model protocols, standing orders, operating procedures, and guidelines which may be necessary or appropriate to carry out the purposes of the Emergency Medical Services Practice Act. The model protocols, standing orders, operating procedures, and guidelines may be modified by the physician medical director for use by any out-of-hospital emergency care provider or emergency medical service before or after adoption;

(9) Establish criteria for approval of organizations issuing cardiopulmonary resuscitation certification which shall include criteria for instructors, establishment of certification periods and minimum curricula, and other aspects of training and certification;

(10) Establish renewal and reinstatement requirements for out-of-hospital emergency care providers and emergency medical services and establish continuing competency requirements. Continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, one or more of the continuing competency activities listed in section 38-145 which a licensed person may select as an alternative to continuing education. The reinstatement requirements for out-of-hospital emergency care providers shall allow reinstatement at the same or any lower level of licensure for which the out-of-hospital emergency care provider is determined to be qualified;

(11) Establish criteria for deployment and use of automated external defibrillators as necessary for the protection of the public health and safety;

(12) Create licensure, renewal, and reinstatement requirements for emergency medical service instructors. The rules and regulations shall include the practices and procedures for licensure, renewal, and reinstatement;

(13) Establish criteria for emergency medical technicians-intermediate, advanced emergency medical technicians, emergency medical technicians-paramedic, or paramedics performing activities within their scope of practice at a hospital or health clinic under subsection (3) of section 38-1224. Such criteria shall include, but not be limited to: (a) Requirements for the orientation of registered nurses, physician assistants, and physicians involved in the supervision of such personnel; (b) supervisory and training requirements for the physician medical director or other person in charge of the medical staff at such hospital or health clinic; and (c) a requirement that such activities shall only be performed at the discretion of, and with the approval of, the governing authority of such hospital or health clinic. For purposes of this subdivision,

health clinic has the definition found in section 71-416 and hospital has the definition found in section 71-419;

(14) Establish model protocols for compliance with the Stroke System of Care Act by an emergency medical service and an out-of-hospital emergency care provider; and

(15) Establish criteria and requirements for emergency medical technicians-intermediate to renew licenses issued prior to September 1, 2010, and continue to practice after such classification has otherwise terminated under subdivision (1) of this section. The rules and regulations shall include the qualifications necessary to renew emergency medical technicians-intermediate licenses after September 1, 2010, the practices and procedures authorized for persons holding and renewing such licenses, and the renewal and reinstatement requirements for holders of such licenses.

**Source:** Laws 1997, LB 138, § 7; Laws 1999, LB 498, § 2; Laws 2001, LB 238, § 1; Laws 2002, LB 1021, § 87; Laws 2002, LB 1033, § 1; R.S.1943, (2003), § 71-5178; Laws 2007, LB463, § 501; Laws 2009, LB195, § 13; Laws 2016, LB722, § 10; Laws 2017, LB88, § 48.

Operative date April 26, 2017.

#### Cross References

Stroke System of Care Act, see section 71-4201.

### **38-1218 Licensure classification; military spouse; temporary license.**

(1) The Legislature adopts all parts of the United States Department of Transportation curricula, including appendices, and skills as the training requirements and permitted practices and procedures for the licensure classifications listed in subdivision (1)(a) of section 38-1217 until modified by the board by rule and regulation. The Legislature adopts the United States Department of Transportation National Emergency Medical Services Education Standards and the National Emergency Medical Services Scope of Practice for the licensure classifications listed in subdivision (1)(b) of section 38-1217 until modified by the board by rule and regulation. The board may approve curricula for the licensure classifications listed in subdivision (1) of section 38-1217.

(2) The department and the board shall consider the following factors, in addition to other factors required or permitted by the Emergency Medical Services Practice Act, when adopting rules and regulations for a licensure classification:

(a) Whether the initial training required for licensure in the classification is sufficient to enable the out-of-hospital emergency care provider to perform the practices and procedures authorized for the classification in a manner which is beneficial to the patient and protects public health and safety;

(b) Whether the practices and procedures to be authorized are necessary to the efficient and effective delivery of out-of-hospital emergency medical care;

(c) Whether morbidity can be reduced or recovery enhanced by the use of the practices and procedures to be authorized for the classification; and

(d) Whether continuing competency requirements are sufficient to maintain the skills authorized for the classification.

(3) An applicant for licensure for a licensure classification listed in subdivision (1)(b) of section 38-1217 who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 1997, LB 138, § 8; Laws 2002, LB 1021, § 88; R.S.1943, (2003), § 71-5179; Laws 2007, LB463, § 502; Laws 2009, LB195, § 14; Laws 2017, LB88, § 49.  
Operative date April 26, 2017.

**ARTICLE 13**

**ENVIRONMENTAL HEALTH SPECIALISTS PRACTICE ACT**

Section  
38-1312. Registered environmental health specialist; reciprocity; continuing competency requirements; military spouse; temporary certification.

**38-1312 Registered environmental health specialist; reciprocity; continuing competency requirements; military spouse; temporary certification.**

(1) 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 certification based on a credential 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.

(2) An applicant who is a military spouse may apply for temporary certification as provided in section 38-129.01.

**Source:** Laws 2007, LB463, § 533; Laws 2017, LB88, § 50.  
Operative date April 26, 2017.

**ARTICLE 14**

**FUNERAL DIRECTING AND EMBALMING PRACTICE ACT**

Section  
38-1421. Reciprocity; military spouse; temporary license.

**38-1421 Reciprocity; military spouse; temporary license.**

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. An applicant for licensure under the act who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 2007, LB463, § 557; Laws 2017, LB88, § 51.  
Operative date April 26, 2017.

**ARTICLE 15**

**HEARING INSTRUMENT SPECIALISTS PRACTICE ACT**

Section  
38-1507. Temporary training license, defined.  
38-1509. Sale or fitting of hearing instruments; license required; exception.

## Section

- 38-1512. License; examination; conditions.  
 38-1513. Temporary training license; issuance; supervision; renewal.  
 38-1516. Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.

**38-1507 Temporary training license, defined.**

Temporary training license means a hearing instrument specialist license issued while the applicant is in training to become a licensed hearing instrument specialist.

**Source:** Laws 2007, LB463, § 571; Laws 2009, LB195, § 25; Laws 2017, LB88, § 52.

Operative date April 26, 2017.

**38-1509 Sale or fitting of hearing instruments; license required; exception.**

(1) Except as otherwise provided in this section, no person shall engage in the sale of or practice of fitting hearing instruments or display a sign or in any other way advertise or represent himself or herself as a person who practices the fitting and sale or dispensing of hearing instruments unless he or she holds an unsuspended, unrevoked hearing instrument specialist license issued by the department as provided in the Hearing Instrument Specialists Practice Act. A hearing instrument specialist license shall confer upon the holder the right to select, fit, and sell hearing instruments. A person holding a license issued under the act prior to August 30, 2009, may continue to practice under such license until it expires under the terms of the license.

(2) A licensed audiologist who maintains a practice pursuant to licensure as an audiologist in which hearing instruments are regularly dispensed or who intends to maintain such a practice shall be exempt from the requirement to be licensed as a hearing instrument specialist.

(3) Nothing in the act shall prohibit a corporation, partnership, limited liability company, trust, association, or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing instruments at retail without a license if it employs only properly licensed natural persons in the direct sale and fitting of such products.

(4) Nothing in the act shall prohibit the holder of a hearing instrument specialist license from the fitting and sale of wearable instruments or devices designed for or offered for the purpose of conservation or protection of hearing.

**Source:** Laws 1969, c. 767, § 2, p. 2904; Laws 1986, LB 701, § 2; Laws 1988, LB 1100, § 149; Laws 1992, LB 1019, § 79; Laws 1993, LB 121, § 438; R.S.1943, (2003), § 71-4702; Laws 2007, LB247, § 52; Laws 2007, LB247, § 70; Laws 2007, LB463, § 573; Laws 2009, LB195, § 27; Laws 2017, LB88, § 53.

Operative date August 24, 2017.

**38-1512 License; examination; conditions.**

(1) Any person may obtain a hearing instrument specialist license under the Hearing Instrument Specialists Practice Act by successfully passing a qualifying examination if the applicant:

- (a) Is at least twenty-one years of age; and

(b) Has an education equivalent to a four-year course in an accredited high school.

(2) The qualifying examination shall consist of written and practical tests. The examination shall not be conducted in such a manner that college training is required in order to pass. Nothing in this examination shall imply that the applicant is required to possess the degree of medical competence normally expected of physicians.

(3) The department shall give examinations approved by the board. A minimum of two examinations shall be offered each calendar year.

**Source:** Laws 1969, c. 767, § 7, p. 2907; Laws 1986, LB 701, § 6; Laws 1987, LB 473, § 53; Laws 1988, LB 1100, § 153; R.S.1943, (2003), § 71-4707; Laws 2007, LB247, § 53; Laws 2007, LB247, § 71; Laws 2007, LB463, § 576; Laws 2009, LB195, § 30; Laws 2017, LB88, § 54.

Operative date August 24, 2017.

#### Cross References

**Credentialing**, general requirements and issuance procedures, see section 38-121 et seq.

### **38-1513 Temporary training license; issuance; supervision; renewal.**

(1) The department, with the recommendation of the board, shall issue a temporary training license to any person who has met the requirements for licensure as a hearing instrument specialist pursuant to subsection (1) of section 38-1512. Previous experience or a waiting period shall not be required to obtain a temporary training license.

(2) Any person who desires a temporary training license shall make application to the department. The temporary training license shall be issued for a period of one year. A person holding a valid license as a hearing instrument specialist shall be responsible for the supervision and training of such applicant and shall maintain adequate personal contact with him or her.

(3) If a person who holds a temporary training license under this section has not successfully passed the licensing examination within twelve months of the date of issuance of the temporary training license, the temporary training license may be renewed or reissued for a twelve-month period. In no case may a temporary training license be renewed or reissued more than once. A renewal or reissuance may take place any time after the expiration of the first twelve-month period.

**Source:** Laws 1969, c. 767, § 8, p. 2907; Laws 1973, LB 515, § 22; Laws 1986, LB 701, § 7; Laws 1987, LB 473, § 55; Laws 1988, LB 1100, § 154; Laws 1991, LB 456, § 36; Laws 1997, LB 752, § 185; Laws 2003, LB 242, § 125; R.S.1943, (2003), § 71-4708; Laws 2007, LB463, § 577; Laws 2009, LB195, § 31; Laws 2017, LB88, § 55.

Operative date April 26, 2017.

### **38-1516 Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.**

(1) An applicant for licensure as a hearing instrument specialist who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application

for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 2007, LB463, § 580; Laws 2009, LB195, § 34; Laws 2017, LB88, § 56.

Operative date April 26, 2017.

**ARTICLE 16**

**LICENSED PRACTICAL NURSE-CERTIFIED PRACTICE ACT**

- Section
- 38-1601. Repealed. Laws 2017, LB88, § 96.
- 38-1602. Repealed. Laws 2017, LB88, § 96.
- 38-1603. Repealed. Laws 2017, LB88, § 96.
- 38-1604. Repealed. Laws 2017, LB88, § 96.
- 38-1605. Repealed. Laws 2017, LB88, § 96.
- 38-1606. Repealed. Laws 2017, LB88, § 96.
- 38-1607. Repealed. Laws 2017, LB88, § 96.
- 38-1608. Repealed. Laws 2017, LB88, § 96.
- 38-1609. Repealed. Laws 2017, LB88, § 96.
- 38-1610. Repealed. Laws 2017, LB88, § 96.
- 38-1611. Repealed. Laws 2017, LB88, § 96.
- 38-1612. Repealed. Laws 2017, LB88, § 96.
- 38-1613. Repealed. Laws 2017, LB88, § 96.
- 38-1614. Repealed. Laws 2017, LB88, § 96.
- 38-1615. Repealed. Laws 2017, LB88, § 96.
- 38-1616. Repealed. Laws 2017, LB88, § 96.
- 38-1617. Repealed. Laws 2017, LB88, § 96.
- 38-1618. Repealed. Laws 2017, LB88, § 96.
- 38-1619. Repealed. Laws 2017, LB88, § 96.
- 38-1620. Repealed. Laws 2017, LB88, § 96.
- 38-1621. Repealed. Laws 2017, LB88, § 96.
- 38-1622. Repealed. Laws 2017, LB88, § 96.
- 38-1623. Repealed. Laws 2017, LB88, § 96.
- 38-1624. Repealed. Laws 2017, LB88, § 96.
- 38-1625. Repealed. Laws 2017, LB88, § 96.

**38-1601 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.

**38-1602 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.

**38-1603 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.

**38-1604 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.

**38-1605 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.

**38-1606 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.



- 38-1607 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.
- 38-1608 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.
- 38-1609 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.
- 38-1610 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.
- 38-1611 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.
- 38-1612 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.
- 38-1613 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.
- 38-1614 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.
- 38-1615 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.
- 38-1616 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.
- 38-1617 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.
- 38-1618 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.
- 38-1619 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.
- 38-1620 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.
- 38-1621 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.
- 38-1622 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.
- 38-1623 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.
- 38-1624 Repealed. Laws 2017, LB88, § 96.**  
Operative date November 1, 2017.

**38-1625 Repealed. Laws 2017, LB88, § 96.**

Operative date November 1, 2017.

**ARTICLE 17****MESSAGE THERAPY PRACTICE ACT**

## Section

38-1711. Massage therapy; temporary license; requirements; applicability of section.

38-1712. Reciprocity; military spouse; temporary license.

**38-1711 Massage therapy; temporary license; requirements; applicability of section.**

(1) 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.

(2) This section shall not apply to a temporary license issued as provided under section 38-129.01.

**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; Laws 2017, LB88, § 57.

Operative date April 26, 2017.

**38-1712 Reciprocity; military spouse; temporary license.**

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. An applicant for a license to practice under the act who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 2007, LB463, § 619; Laws 2017, LB88, § 58.

Operative date April 26, 2017.

**ARTICLE 18****MEDICAL NUTRITION THERAPY PRACTICE ACT**

## Section

38-1814. Reciprocity; military spouse; temporary license.

**38-1814 Reciprocity; military spouse; temporary license.**

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. An applicant for a license to practice under the act who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 2007, LB463, § 636; Laws 2017, LB88, § 59.  
Operative date April 26, 2017.

**ARTICLE 19**

**MEDICAL RADIOGRAPHY PRACTICE ACT**

Section

- 38-1917. Student; provisions not applicable; temporary medical radiographer license; term; applicability of section.
- 38-1917.02. Student; provisions not applicable; temporary limited computed tomography radiographer license; term; applicability of section.

**38-1917 Student; provisions not applicable; temporary medical radiographer license; term; applicability of section.**

(1) 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 issued under this section shall expire eighteen months after issuance and shall not be renewed. Persons licensed under this section 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.

(2) This section shall not apply to a temporary credential issued as provided under section 38-129.01.

**Source:** Laws 2007, LB463, § 655; Laws 2017, LB88, § 60.  
Operative date April 26, 2017.

**38-1917.02 Student; provisions not applicable; temporary limited computed tomography radiographer license; term; applicability of section.**

(1) The requirements of section 38-1917.01 do not apply to a student while enrolled and participating in an educational program in nuclear medicine technology who, as part of the educational program, applies X-rays to humans using a computed tomography system while under the supervision of the licensed practitioners, medical radiographers, or limited computed tomography radiographers associated with the educational program. A person registered by the Nuclear Medicine Technology Certification Board or the American Registry of Radiologic Technologists in nuclear medicine technology may apply for a license as a temporary limited computed tomography radiographer. Temporary limited computed tomography radiographer licenses issued under this section shall expire twenty-four months after issuance and shall not be renewed. Persons licensed under this section as temporary limited computed tomography radiographers shall be permitted to perform medical radiography restricted to

computed tomography while under the direct supervision and in the physical presence of licensed practitioners, medical radiographers, or limited computed tomography radiographers.

(2) This section shall not apply to a temporary credential issued as provided under section 38-129.01.

**Source:** Laws 2008, LB928, § 12; Laws 2017, LB88, § 61.  
Operative date April 26, 2017.

## ARTICLE 20

### MEDICINE AND SURGERY PRACTICE ACT

#### Section

- 38-2028. Reciprocity; requirements; military spouse; temporary license.  
38-2034. Applicant; reciprocity; requirements; military spouse; temporary license.  
38-2049. Physician assistants; licenses; temporary licenses; issuance; military spouse; temporary license.  
38-2058. Acupuncture; license required; standard of care.

#### **38-2028 Reciprocity; requirements; military spouse; temporary license.**

(1) 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 comply with the requirements of the Interstate Medical Licensure Compact beginning on the effective date of the compact or 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.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 2007, LB463, § 686; Laws 2017, LB88, § 62.  
Operative date April 26, 2017.

#### Cross References

Interstate Medical Licensure Compact, see section 38-3601.

#### **38-2034 Applicant; reciprocity; requirements; military spouse; temporary license.**

(1) 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 comply with the requirements of the Interstate Medical Licensure Compact beginning on the effective date of the compact or 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.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 2007, LB463, § 692; Laws 2017, LB88, § 63.  
Operative date April 26, 2017.

**Cross References**

Interstate Medical Licensure Compact, see section 38-3601.

**38-2049 Physician assistants; licenses; temporary licenses; issuance; military spouse; temporary license.**

(1) The department, with the recommendation of the board, shall issue licenses to persons who are graduates of an approved program and have passed a proficiency examination.

(2) The department, with the recommendation of the board, shall issue temporary licenses under this subsection to persons who have successfully completed an approved program but who have not yet passed a proficiency examination. Any temporary license issued pursuant to this subsection shall be issued for a period not to exceed one year and under such conditions as determined by the department, with the recommendation of the board. The temporary license issued under this subsection may be extended by the department, with the recommendation of the board.

(3) Physician assistants approved by the board prior to April 16, 1985, shall not be required to complete the proficiency examination.

(4) An applicant who is a military spouse applying for a license to practice as a physician assistant may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 1973, LB 101, § 5; R.S.Supp.,1973, § 85-179.08; Laws 1985, LB 132, § 5; Laws 1996, LB 1108, § 10; R.S.1943, (2003), § 71-1,107.19; Laws 2007, LB463, § 707; Laws 2009, LB195, § 44; Laws 2017, LB88, § 64.  
Operative date April 26, 2017.

**Cross References**

**Credentialing**, general requirements and issuance procedures, see section 38-121 et seq.

**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. 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. An acupuncturist licensed under the Uniform Credentialing Act shall refer a patient to an appropriate practitioner when the problem of the patient is beyond the training, experience, or competence of the acupuncturist.

**Source:** Laws 2001, LB 270, § 10; R.S.1943, (2003), § 71-1,346; Laws 2007, LB463, § 716; Laws 2017, LB19, § 1.  
Effective date August 24, 2017.

## ARTICLE 21

## MENTAL HEALTH PRACTICE ACT

## Section

- 38-2125. Reciprocity; military spouse; temporary license.  
 38-2130. Certified marriage and family therapist, certified professional counselor, social worker; reciprocity; military spouse; temporary certificate.

**38-2125 Reciprocity; military spouse; temporary license.**

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. An applicant for a license who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 2007, LB463, § 742; Laws 2017, LB88, § 65.  
 Operative date April 26, 2017.

**38-2130 Certified marriage and family therapist, certified professional counselor, social worker; reciprocity; military spouse; temporary certificate.**

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. An applicant for a certificate who is a military spouse may apply for a temporary certificate as provided in section 38-129.01.

**Source:** Laws 2007, LB463, § 747; Laws 2017, LB88, § 66.  
 Operative date April 26, 2017.

## ARTICLE 22

## NURSE PRACTICE ACT

## Section

- 38-2201. Act, how cited.  
 38-2211. Practice of nursing by a licensed practical nurse, defined.  
 38-2216. Board; rules and regulations; powers and duties; enumerated.  
 38-2220. Nursing; license; application; requirements.  
 38-2223. Registered nurse; licensed practical nurse; reciprocity; continuing competency requirements; military spouse; temporary license.  
 38-2225. Nursing; temporary license; issuance; conditions; how long valid; extension.  
 38-2237. Intravenous therapy; requirements.  
 38-2238. Licenses issued under Licensed Practical Nurse-Certified Practice Act; how treated.

**38-2201 Act, how cited.**

Sections 38-2201 to 38-2238 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; Laws 2017, LB88, § 67.  
 Operative date August 24, 2017.

**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;

(f) Providing intravenous therapy if the licensed practical nurse meets the requirements of section 38-2237; and

(g) 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; Laws 2017, LB88, § 68.  
Operative date August 24, 2017.

**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 non-binding. 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; and

(10) 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; Laws 2017, LB88, § 70.

Operative date November 1, 2017.

#### Cross References

Nurse Licensure Compact, see sections 71-1795 to 71-1795.02.

### **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 a board-approved examination and, unless a graduate of a nursing program in Canada, provide a satisfactory evaluation of the education program attended by the applicant from a board-approved foreign credentials evaluation service.

**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; Laws 2017, LB88, § 71.

Operative date April 26, 2017.

#### Cross References

**Credentialing**, general requirements and issuance procedures, see section 38-121 et seq.

### **38-2223 Registered nurse; licensed practical nurse; reciprocity; continuing competency requirements; military spouse; temporary license.**



(1) 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.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**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; Laws 2017, LB88, § 72.

Operative date April 26, 2017.

**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;

(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; or

(d) Military spouses as provided in section 38-129.01.

(2) A temporary license issued pursuant to subdivision (1)(a), (b), or (c) of this section may be extended by the department, with the recommendation of the board.

**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; Laws 2017, LB88, § 73.

Operative date April 26, 2017.

**38-2237 Intravenous therapy; requirements.**

(1) A licensed practical nurse may provide intravenous therapy if he or she (a) holds a valid license issued before May 1, 2016, by the department pursuant to the Licensed Practical Nurse-Certified Practice Act as such act existed on such date, (b) graduates from an approved program of practical nursing on or after May 1, 2016, or (c) holds a valid license as a licensed practical nurse issued on or before May 1, 2016, and completes, within five years after August

24, 2017, (i) an eight-hour didactic course in intravenous therapy which shall include, but not be limited to, peripheral intravenous lines, central lines, and legal aspects of intravenous therapy and (ii) an approved employer-specific intravenous therapy skills course.

(2) This section does not require a licensed practical nurse who does not provide intravenous therapy in the course of employment to complete the course described in subdivision (1)(c)(ii) of this section.

**Source:** Laws 2017, LB88, § 69.

Operative date August 24, 2017.

**38-2238 Licenses issued under Licensed Practical Nurse-Certified Practice Act; how treated.**

On and after November 1, 2017, all licenses issued pursuant to the Licensed Practical Nurse-Certified Practice Act before such date shall be renewed as licenses to practice as a licensed practical nurse pursuant to section 38-2221.

**Source:** Laws 2017, LB88, § 74.

Operative date August 24, 2017.

**ARTICLE 23**

**NURSE PRACTITIONER PRACTICE ACT**

Section

- 38-2305. Approved nurse practitioner program, defined.  
 38-2314.01. Transition-to-practice agreement, defined.  
 38-2316. Unlicensed person; acts permitted.  
 38-2317. Nurse practitioner; licensure; requirements.  
 38-2318. Nurse practitioner; temporary license; requirements; military spouse; temporary license.  
 38-2322. Nurse practitioner; licensed on or before August 30, 2015; requirements; transition-to-practice agreement; contents.

**38-2305 Approved nurse practitioner program, defined.**

Approved nurse practitioner program means a program which:

(1) Is a graduate-level program accredited by a national accrediting body recognized by the United States Department of Education;

(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; Laws 2017, LB88, § 75.

Operative date April 26, 2017.

**38-2314.01 Transition-to-practice agreement, defined.**

Transition-to-practice agreement means a collaborative agreement for two thousand hours of initial practice between a nurse practitioner and a supervising provider which provides for the delivery of health care through a collaborative practice and which meets the requirements of section 38-2322.

**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; R.S.1943, (2008), § 38-2310; Laws 2015, LB107, § 4; Laws 2017, LB88, § 76.  
Operative date April 26, 2017.

**38-2316 Unlicensed person; acts permitted.**

The Nurse Practitioner Practice Act does not prohibit the performance of activities of a nurse practitioner by a person who does not have a license or temporary license under the act 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 nurse practitioner program for the preparation of nurse practitioners as part of that approved program.

**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; Laws 2017, LB88, § 77.  
Operative date April 26, 2017.

**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) 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; and
- (d) Evidence of completion of two thousand hours of practice as a nurse practitioner which have been completed under a transition-to-practice agreement, under a collaborative agreement, under an integrated practice agreement, through independent practice, or under any combination of such agreements and practice, as allowed in this state or another state.

(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; Laws 2017, LB88, § 78. Operative date April 26, 2017.

Cross References

**Advanced Practice Registered Nurse Practice Act**, see section 38-201.

**Credentialing**, general requirements and issuance procedures, see section 38-121 et seq.

**Nurse Licensure Compact**, see sections 71-1795 to 71-1795.02.

**38-2318 Nurse practitioner; temporary license; requirements; military spouse; temporary license.**

(1)(a) The department may grant a temporary license to practice as a nurse practitioner for up to one hundred twenty days upon application:

(i) To graduates of an approved nurse practitioner program pending results of the first credentialing examination following graduation;

(ii) To a nurse practitioner lawfully authorized to practice in another state pending completion of the application for a Nebraska license; and

(iii) To applicants for purposes of a reentry program or supervised practice as part of continuing competency activities established by the board.

(b) A temporary license issued pursuant to this subsection may be extended for up to one year with the approval of the board.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**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; Laws 2017, LB88, § 79.

Operative date April 26, 2017.

**38-2322 Nurse practitioner; licensed on or before August 30, 2015; requirements; transition-to-practice agreement; contents.**

(1)(a) A transition-to-practice agreement shall be a formal written agreement that provides that the nurse practitioner and the supervising provider practice collaboratively within the framework of their respective scopes of practice.

(b) The nurse practitioner and the supervising provider shall each be responsible for his or her individual decisions in managing the health care of patients through consultation, collaboration, and referral. The nurse practitioner and the supervising provider shall have joint responsibility for the delivery of health care to a patient based upon the scope of practice of the nurse practitioner and the supervising provider.

(c) The supervising provider shall be responsible for supervision of the nurse practitioner to ensure the quality of health care provided to patients.

(d) In order for a nurse practitioner to be a supervising provider for purposes of a transition-to-practice agreement, the nurse practitioner shall submit to the department evidence of completion of ten thousand hours of practice as a nurse practitioner which have been completed under a transition-to-practice agreement, under a collaborative agreement, under an integrated practice agreement, through independent practice, or under any combination of such agreements or practice, as allowed in this state or another state.

(2) A nurse practitioner who was licensed in good standing in Nebraska on or before August 30, 2015, and had attained the equivalent of an initial two thousand hours of practice supervised by a physician or osteopathic physician shall be allowed to practice without a transition-to-practice agreement.

(3) For purposes of this section:

(a) Supervising provider means a physician, osteopathic physician, or nurse practitioner licensed and practicing in Nebraska and practicing in the same practice specialty, related specialty, or field of practice as the nurse practitioner being supervised; and

(b) Supervision means the ready availability of the supervising provider for consultation and direction of the activities of the nurse practitioner being supervised within such nurse practitioner's defined scope of practice.

**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; Laws 2015, LB107, § 6; Laws 2017, LB88, § 80.

Operative date April 26, 2017.

#### ARTICLE 24

### NURSING HOME ADMINISTRATOR PRACTICE ACT

Section

38-2421. License; reciprocity; military spouse; temporary license.

#### **38-2421 License; reciprocity; military spouse; temporary license.**

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. An applicant for a license who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**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; Laws 2017, LB88, § 81.

Operative date April 26, 2017.

#### ARTICLE 25

### OCCUPATIONAL THERAPY PRACTICE ACT

Section

38-2517. Occupational therapist; therapy assistant; temporary license; applicability of section.

38-2523. Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.

**38-2517 Occupational therapist; therapy assistant; temporary license; applicability of section.**

(1) 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.

(2) This section does not apply to a temporary license issued as provided in section 38-129.01.

**Source:** Laws 1984, LB 761, § 33; Laws 1988, LB 1100, § 175; R.S.1943, (2003), § 71-6105; Laws 2007, LB463, § 857; Laws 2017, LB88, § 82.

Operative date April 26, 2017.

**38-2523 Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.**

(1) 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.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 2007, LB463, § 863; Laws 2017, LB88, § 83.

Operative date April 26, 2017.

**ARTICLE 26****OPTOMETRY PRACTICE ACT**

Section

38-2609. Applicant for licensure based on license outside the state; requirements; military spouse; temporary license.

**38-2609 Applicant for licensure based on license outside the state; requirements; military spouse; temporary license.**

(1) 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 two of the three years immediately preceding the application for licensure in Nebraska and must provide satisfactory evidence of being credentialed in such other jurisdiction at a level with requirements that are at least as stringent as or more stringent than the requirements for the comparable credential being applied for in this state.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 2007, LB463, § 881; Laws 2008, LB972, § 1; Laws 2017, LB88, § 84.

Operative date April 26, 2017.

## ARTICLE 27

### PERFUSION PRACTICE ACT

#### Section

38-2701. Act, how cited.

38-2703. Terms, defined.

38-2707. Temporary license.

38-2712. Repealed. Laws 2017, LB644, § 21.

#### **38-2701 Act, how cited.**

Sections 38-2701 to 38-2711 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; Laws 2017, LB644, § 4.

Effective date August 24, 2017.

#### **38-2703 Terms, defined.**

For purposes of the Perfusion Practice Act:

- (1) Board means the Board of Medicine and Surgery;
- (2) 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;
- (3) 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

(4) 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; Laws 2017, LB644, § 5.  
Effective date August 24, 2017.

### **38-2707 Temporary license.**

(1) 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 issued under this subsection 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 issued under this subsection 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 issued under this subsection shall be surrendered to the department upon its expiration.

(2) An applicant for licensure pursuant to the act who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 2007, LB236, § 14; R.S.Supp.,2007, § 71-1,396; Laws 2017, LB88, § 85.  
Operative date April 26, 2017.

### **38-2712 Repealed. Laws 2017, LB644, § 21.**

## **ARTICLE 28**

### **PHARMACY PRACTICE ACT**

Section	
38-2801.	Act, how cited.
38-2802.	Definitions, where found.
38-2807.01.	Bioequivalent, defined.
38-2807.02.	Biological product, defined.
38-2807.03.	Brand name, defined.
38-2810.01.	Chemically equivalent, defined.



- Section
- 38-2818.02. Drug product, defined.
  - 38-2818.03. Drug product select, defined.
  - 38-2821.01. Equivalent, defined.
  - 38-2823.01. Generic name, defined.
  - 38-2825.02. Interchangeable biological product, defined.
  - 38-2836.01. Practice agreement, defined.
  - 38-2843.01. Repackage, defined.
  - 38-2848. Written protocol, defined.
  - 38-2853. Repealed. Laws 2017, LB166, § 27.
  - 38-2866.01. Pharmacist; supervision of pharmacy technicians and pharmacist interns.
  - 38-2867.03. Pharmacist; practice agreement; notice; contents; form; pharmacist intern participation.
  - 38-2870. Medical order; duration; dispensing; transmission.
  - 38-2892. Pharmacy technicians; responsibility for supervision and performance.
  - 38-2897. Duty to report impaired practitioner; immunity.
  - 38-28,109. Drug product selection; purposes of act.
  - 38-28,110. Transferred to section 38-2807.01.
  - 38-28,111. Drug product selection; when; pharmacist; duty.
  - 38-28,112. Pharmacist; drug product selection; effect on reimbursement; label; price.
  - 38-28,113. Drug product selection; pharmacist; practitioner; negligence; what constitutes.
  - 38-28,116. Drug product selection; rules and regulations; department; duty.

### 38-2801 Act, how cited.

Sections 38-2801 to 38-28,107 and the Nebraska Drug Product Selection Act shall be known and may be cited as the Pharmacy Practice Act.

**Source:** Laws 2007, LB247, § 79; Laws 2007, LB463, § 897; Laws 2009, LB195, § 47; Laws 2009, LB604, § 1; Laws 2011, LB179, § 2; Laws 2015, LB37, § 29; Laws 2017, LB166, § 9; Laws 2017, LB481, § 1.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB166, section 9, with LB481, section 1, to reflect all amendments.

**Note:** Changes made by LB166 became effective April 28, 2017. Changes made by LB481 became operative January 1, 2018.

#### Cross References

**Nebraska Drug Product Selection Act**, see section 38-28,108.

### 38-2802 Definitions, where found.

For purposes of the Pharmacy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2803 to 38-2848 apply.

**Source:** Laws 2007, LB463, § 898; Laws 2009, LB195, § 48; Laws 2009, LB604, § 2; Laws 2011, LB179, § 3; Laws 2015, LB37, § 30; Laws 2017, LB166, § 10; Laws 2017, LB481, § 2.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB166, section 10, with LB481, section 2, to reflect all amendments.

**Note:** Changes made by LB166 became effective April 28, 2017. Changes made by LB481 became operative January 1, 2018.

### 38-2807.01 Bioequivalent, defined.

Bioequivalent means drug products: (1) That are legally marketed under regulations promulgated by the federal Food and Drug Administration; (2) that are the same dosage form of the identical active ingredients in the identical amounts as the drug product prescribed; (3) that comply with compendial standards and are consistent from lot to lot with respect to (a) purity of ingredients, (b) weight variation, (c) uniformity of content, and (d) stability; and

(4) for which the federal Food and Drug Administration has established bioequivalent standards or has determined that no bioequivalence problems exist.

**Source:** Laws 1977, LB 103, § 2; Laws 1983, LB 476, § 21; Laws 1989, LB 342, § 36; Laws 1996, LB 1044, § 720; Laws 1998, LB 1073, § 148; Laws 2001, LB 398, § 76; Laws 2003, LB 667, § 15; Laws 2005, LB 382, § 11; Laws 2007, LB296, § 622; Laws 2007, LB463, § 1232; R.S.1943, (2009), § 71-5402; Laws 2015, LB37, § 61; R.S.1943, (2016), § 38-28,110; Laws 2017, LB481, § 3.  
Operative date January 1, 2018.

#### **38-2807.02 Biological product, defined.**

Biological product has the same meaning as in 42 U.S.C. 262, as such section existed on January 1, 2017.

**Source:** Laws 2017, LB481, § 4.  
Operative date January 1, 2018.

#### **38-2807.03 Brand name, defined.**

Brand name means the proprietary or trade name selected by the manufacturer, distributor, or packager for a drug product and placed upon the labeling of such product at the time of packaging.

**Source:** Laws 2017, LB481, § 5.  
Operative date January 1, 2018.

#### **38-2810.01 Chemically equivalent, defined.**

Chemically equivalent means drug products that contain amounts of the identical therapeutically active ingredients in the identical strength, quantity, and dosage form and that meet present compendial standards.

**Source:** Laws 2017, LB481, § 6.  
Operative date January 1, 2018.

#### **38-2818.02 Drug product, defined.**

Drug product means any drug or device as defined in section 38-2841.

**Source:** Laws 2017, LB481, § 7.  
Operative date January 1, 2018.

#### **38-2818.03 Drug product select, defined.**

Drug product select means to dispense, without the practitioner's express authorization, an equivalent drug product or an interchangeable biological product in place of the brand-name drug or the biological product contained in a medical order of such practitioner.

**Source:** Laws 2017, LB481, § 8.  
Operative date January 1, 2018.

#### **38-2821.01 Equivalent, defined.**

Equivalent means drug products that are both chemically equivalent and bioequivalent.

**Source:** Laws 2017, LB481, § 9.  
Operative date January 1, 2018.

**38-2823.01 Generic name, defined.**

Generic name means the official title of a drug or drug combination as determined by the United States Adopted Names Council and accepted by the federal Food and Drug Administration of those drug products having the same active chemical ingredients in the same strength and quantity.

**Source:** Laws 2017, LB481, § 10.  
Operative date January 1, 2018.

**38-2825.02 Interchangeable biological product, defined.**

Interchangeable biological product means a biological product that the federal Food and Drug Administration:

(1) Has licensed and has determined meets the standards for interchangeability pursuant to 42 U.S.C. 262(k)(4), as such section existed on January 1, 2017, or as set forth in the Lists of Licensed Biological Products with Reference Product Exclusivity and Biosimilarity or Interchangeability Evaluations published by the federal Food and Drug Administration, as such publication existed on January 1, 2017; or

(2) Has determined is therapeutically equivalent as set forth in the Approved Drug Products with Therapeutic Equivalence Evaluations of the federal Food and Drug Administration, as such publication existed on January 1, 2017.

**Source:** Laws 2017, LB481, § 11.  
Operative date January 1, 2018.

**38-2836.01 Practice agreement, defined.**

Practice agreement means a document signed by a pharmacist and a practitioner with independent prescribing authority, in which the pharmacist agrees to design, implement, and monitor a therapeutic plan based on a written protocol.

**Source:** Laws 2017, LB166, § 11.  
Effective date April 28, 2017.

**38-2843.01 Repackage, defined.**

Repackage means the act of taking a drug product from the container in which it was distributed by the manufacturer and placing it into a different container without further manipulation of the drug. Repackaging also includes the act of placing the contents of multiple containers, such as vials, of the same finished drug product into one container so long as the container does not contain other ingredients or is not further manipulated to change the drug product in any way.

**Source:** Laws 2017, LB166, § 12.  
Effective date April 28, 2017.

**38-2848 Written protocol, defined.**

Written protocol means a written template, agreed to by pharmacists and practitioners with independent prescribing authority, working in concert, which directs how the pharmacists will implement and monitor a therapeutic plan.

**Source:** Laws 2017, LB166, § 13.  
Effective date April 28, 2017.

**38-2853 Repealed. Laws 2017, LB166, § 27.**

**38-2866.01 Pharmacist; supervision of pharmacy technicians and pharmacist interns.**

A pharmacist may supervise any combination of pharmacy technicians and pharmacist interns at any time up to a total of three people. A pharmacist intern shall be supervised at all times while performing the functions of a pharmacist intern which may include all aspects of the practice of pharmacy unless otherwise restricted. This section does not apply to a pharmacist intern who is receiving experiential training directed by the accredited pharmacy program in which he or she is enrolled.

**Source:** Laws 2015, LB37, § 43; Laws 2017, LB166, § 14.  
Effective date April 28, 2017.

**38-2867.03 Pharmacist; practice agreement; notice; contents; form; pharmacist intern participation.**

(1) A pharmacist may enter into a practice agreement as provided in this section with a licensed health care practitioner authorized to prescribe independently to provide pharmaceutical care according to written protocols. The pharmacist shall notify the board of any practice agreement at the initiation of the agreement and at the time of any change in parties to the agreement or written protocols. The notice shall be given to both the Board of Pharmacy and the board which licensed the health care practitioner. The notice shall contain the name of each pharmacist participating in the agreement and each licensed health care practitioner authorized to prescribe independently participating in the agreement and a description of the therapy being monitored or initiated.

(2) A copy of the practice agreement and written protocols shall be available for review by a representative of the department. A copy of the practice agreement shall be sent to the Board of Pharmacy upon request by the board.

(3) A practice agreement shall be in writing. Each pharmacist participating in the agreement and each licensed health care practitioner authorized to prescribe independently participating in the agreement shall sign the agreement and the written protocols at the initiation of the agreement and shall review, sign, and date the documents every two years thereafter. A practice agreement is active after it is signed by all the parties listed in the agreement.

(4) A practice agreement and written protocols cease immediately upon (a) the death of either the pharmacist or the practitioner, (b) the loss of license to practice by either the pharmacist or the practitioner, (c) a disciplinary action limiting the ability of either the pharmacist or practitioner to enter into practice agreement, or (d) the individual decision of either the pharmacist or practitioner or mutual agreement by the parties to terminate the agreement.

(5) A pharmacist intern may participate in a practice agreement without expressly being mentioned in the agreement if the pharmacist intern is supervised by a pharmacist who is a party to the agreement.

**Source:** Laws 2017, LB166, § 15.

Effective date April 28, 2017.

**38-2870 Medical order; duration; dispensing; transmission.**

(1) All medical orders shall be written, oral, or electronic and 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, compound, administer, or prepare for administration 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 sections 28-414 and 28-414.01, 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 transmission of a written medical order or electronic transmission of a medical order signed by the practitioner, or (d) by facsimile transmission of a written medical order or electronic transmission of a medical order which is not signed by the practitioner. Such an unsigned medical order shall be verified with the practitioner.

(4)(a) Except as otherwise provided in sections 28-414 and 28-414.01, any medical order transmitted by facsimile or electronic transmission shall:

(i) 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;

(ii) 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

(iii) Serve as the original medical order if all other requirements of this subsection are satisfied.

(b) Medical orders transmitted by electronic transmission shall be signed by the practitioner either with an electronic signature for legend drugs which are not controlled substances or a digital signature for legend drugs which are controlled substances.

(5) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of any medical order transmitted by facsimile or electronic transmission.

(6) The quantity of drug indicated in a medical order for a resident of a long-term care facility shall be sixty days unless otherwise limited by the prescribing practitioner.

**Source:** Laws 2001, LB 398, § 35; Laws 2005, LB 382, § 7; R.S.Supp.,2006, § 71-1,146.01; Laws 2007, LB463, § 966; Laws 2014, LB811, § 26; Laws 2015, LB37, § 48; Laws 2017, LB166, § 16.

Effective date April 28, 2017.

**38-2892 Pharmacy technicians; responsibility for supervision and performance.**

(1) The pharmacist in charge of a pharmacy or hospital pharmacy employing pharmacy technicians shall be responsible for the supervision and performance of the pharmacy technicians.

(2) Except as otherwise provided in the Automated Medication Systems Act, the supervision of pharmacy technicians at a pharmacy shall be performed by the pharmacist who is on duty in the facility with the pharmacy technicians or located in pharmacies that utilize a real-time, online data base and have a pharmacist in all pharmacies. The supervision of pharmacy technicians at a hospital pharmacy shall be performed by the pharmacist assigned by the pharmacist in charge to be responsible for the supervision and verification of the activities of the pharmacy technicians.

**Source:** Laws 2007, LB236, § 33; R.S.Supp.,2007, § 71-1,147.67; Laws 2015, LB37, § 52; Laws 2017, LB166, § 17.

Effective date April 28, 2017.

**Cross References**

**Automated Medication Systems Act**, see section 71-2444.

**38-2897 Duty to report impaired practitioner; immunity.**

(1) The requirement to file a report under subsection (1) of section 38-1,125 shall not apply to pharmacist interns or pharmacy technicians, except that a pharmacy technician shall, within thirty days after having 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, report to the department in such manner and form as the department may require. A report made to the department under this section shall be confidential. The identity of any person making such report or providing information leading to the making of such report shall be confidential.

(2) A pharmacy technician making a report to the department under this section, except for 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 under 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.

(3) A report submitted by a professional liability insurance company on behalf of a credential holder within the thirty-day period prescribed in this section shall be sufficient to satisfy the credential holder's reporting requirement under this section.

(4) Persons who are members of committees established under the Health Care Quality Improvement Act, the Patient Safety Improvement Act, or section 25-12,123 or witnesses before such committees shall not be required to report under this section. 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 this section only because he or she attended or testified before such committee.

(5) Documents from original sources shall not be construed as immune from discovery or use in actions under this section.

**Source:** Laws 2007, LB236, § 38; R.S.Supp.,2007, § 71-1,147.72; Laws 2017, LB166, § 18.

Effective date April 28, 2017.

#### Cross References

**Health Care Quality Improvement Act**, see section 71-7904.

**Patient Safety Improvement Act**, see section 71-8701.

### **38-28,109 Drug product selection; purposes of act.**

The purposes of the Nebraska Drug Product Selection Act are to provide for the drug product selection of equivalent drug products or interchangeable biological products and to promote the greatest possible use of such products.

**Source:** Laws 2003, LB 667, § 14; R.S.1943, (2009), § 71-5401.02; Laws 2015, LB37, § 60; Laws 2017, LB481, § 12.

Operative date January 1, 2018.

### **38-28,110 Transferred to section 38-2807.01.**

### **38-28,111 Drug product selection; when; pharmacist; duty.**

(1) A pharmacist may drug product select except when:

(a) A practitioner designates that drug product selection is not permitted by specifying in the written, oral, or electronic prescription that there shall be no drug product selection. For written or electronic prescriptions, the practitioner shall specify "no drug product selection", "dispense as written", "brand medically necessary", or "no generic substitution" or the notation "N.D.P.S.", "D.A.W.", or "B.M.N." or words or notations of similar import to indicate that drug product selection is not permitted. The pharmacist shall note "N.D.P.S.", "D.A.W.", "B.M.N.", "no drug product selection", "dispense as written", "brand medically necessary", "no generic substitution", or words or notations of similar import on the prescription to indicate that drug product selection is not permitted if such is communicated orally by the prescribing practitioner; or

(b) A patient or designated representative or caregiver of such patient instructs otherwise.

(2) A pharmacist shall not drug product select unless:

(a) The drug product, if it is in solid dosage form, has been marked with an identification code or monogram directly on the dosage unit;

(b) The drug product has been labeled with an expiration date;

(c) The manufacturer, distributor, or packager of the drug product provides reasonable services, as determined by the board, to accept the return of drug products that have reached their expiration date; and

(d) The manufacturer, distributor, or packager maintains procedures for the recall of unsafe or defective drug products.

(3) If a pharmacist receives a prescription for a biological product and chooses to dispense an interchangeable biological product for the prescribed product, the pharmacist must advise the patient or the patient's caregiver that drug product selection has occurred.

(4) Within three business days after the dispensing of a biological product, the dispensing pharmacist or the pharmacist's designee shall make an entry of the specific product provided to the patient, including the name of the product and the manufacturer. The communication shall be conveyed by making an entry that is electronically accessible to the prescriber through an interoperable electronic medical records system, electronic prescribing technology, a pharmacy benefit management system, or a pharmacy record. Entry into an electronic records system described in this subsection is presumed to provide notice to the prescriber. Otherwise, the pharmacist shall communicate the biological product dispensed to the prescriber using facsimile, telephone, electronic transmission, or other prevailing means, except that communication shall not be required if (a) there is no interchangeable biological product approved by the federal Food and Drug Administration for the product prescribed or (b) a refill prescription is not changed from product dispensed on the prior filling.

**Source:** Laws 1977, LB 103, § 3; Laws 1978, LB 689, § 2; Laws 1983, LB 476, § 22; Laws 1989, LB 353, § 1; Laws 1991, LB 363, § 1; Laws 1998, LB 1073, § 149; Laws 1999, LB 828, § 174; Laws 2003, LB 667, § 16; Laws 2005, LB 382, § 12; Laws 2007, LB247, § 54; Laws 2009, LB195, § 83; R.S.1943, (2009), § 71-5403; Laws 2015, LB37, § 62; Laws 2017, LB481, § 13. Operative date January 1, 2018.

**38-28,112 Pharmacist; drug product selection; effect on reimbursement; label; price.**

(1) Whenever a drug product has been prescribed with the notation that no drug product selection is permitted for a patient who has a contract whereunder he or she is reimbursed for the cost of health care, directly or indirectly, the party that has contracted to reimburse the patient, directly or indirectly, shall make reimbursements on the basis of the price of the brand-name drug product and not on the basis of the equivalent drug product or interchangeable biological product, unless the contract specifically requires generic reimbursement under the Code of Federal Regulations.



(2) A prescription drug or device when dispensed shall bear upon the label the name of the drug or device in the container unless the practitioner writes do not label or words of similar import in the prescription or so designates orally.

(3) Nothing in this section shall (a) require a pharmacy to charge less than its established minimum price for the filling of any prescription or (b) prohibit any hospital from developing, using, and enforcing a formulary.

**Source:** Laws 1977, LB 103, § 4; Laws 1983, LB 476, § 23; Laws 1996, LB 1044, § 721; Laws 1998, LB 1073, § 150; Laws 2003, LB 667, § 17; Laws 2005, LB 382, § 13; R.S.1943, (2009), § 71-5404; Laws 2015, LB37, § 63; Laws 2017, LB481, § 14.  
Operative date January 1, 2018.

**38-28,113 Drug product selection; pharmacist; practitioner; negligence; what constitutes.**

(1) Drug product selection by a pharmacist pursuant to the Nebraska Drug Product Selection Act shall not constitute the practice of medicine.

(2) Drug product selection by a pharmacist pursuant to the act or any rules and regulations adopted and promulgated under the act shall not constitute evidence of negligence if the drug product selection was made within the reasonable and prudent practice of pharmacy.

(3) When drug product selection by a pharmacist is permissible under the act, such drug product selection shall not constitute evidence of negligence on the part of the prescribing practitioner. The failure of a prescribing practitioner to provide that there shall be no drug product selection in any case shall not constitute evidence of negligence or malpractice on the part of such prescribing practitioner.

**Source:** Laws 1977, LB 103, § 5; Laws 2001, LB 398, § 77; Laws 2003, LB 667, § 18; R.S.1943, (2009), § 71-5405; Laws 2015, LB37, § 64; Laws 2017, LB481, § 15.  
Operative date January 1, 2018.

**38-28,116 Drug product selection; rules and regulations; department; duty.**

(1) The department may adopt and promulgate rules and regulations necessary to implement the Nebraska Drug Product Selection Act upon the joint recommendation of the Board of Medicine and Surgery and the Board of Pharmacy.

(2) The department shall maintain a link on its web site to the current list of all biological products that the federal Food and Drug Administration has determined to be interchangeable biological products.

**Source:** Laws 2003, LB 667, § 21; R.S.1943, (2009), § 71-5409; Laws 2015, LB37, § 67; Laws 2017, LB481, § 16.  
Operative date January 1, 2018.

**ARTICLE 29**

**PHYSICAL THERAPY PRACTICE ACT**

Section  
38-2924. Applicant; reciprocity; continuing competency requirements; military spouse; temporary license.

**38-2924 Applicant; reciprocity; continuing competency requirements; military spouse; temporary license.**

(1) 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.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 2007, LB463, § 1017; Laws 2017, LB88, § 87.  
Operative date April 26, 2017.

**ARTICLE 31**

**PSYCHOLOGY PRACTICE ACT**

Section

38-3120. Temporary practice pending licensure permitted; when; military spouse; temporary license.

**38-3120 Temporary practice pending licensure permitted; when; military spouse; temporary license.**

(1) 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.

(2) An applicant for licensure as a psychologist who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 1994, LB 1210, § 85; R.S.1943, (2003), § 71-1,206.23; Laws 2007, LB463, § 1054; Laws 2017, LB88, § 88.  
Operative date April 26, 2017.

**ARTICLE 32**

**RESPIRATORY CARE PRACTICE ACT**

Section

38-3212. Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.

**38-3212 Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.**

(1) 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.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 2007, LB463, § 1078; Laws 2017, LB88, § 89.  
Operative date April 26, 2017.

### ARTICLE 33

#### VETERINARY MEDICINE AND SURGERY PRACTICE ACT

Section

38-3327. Applicant; reciprocity; requirements; military spouse; temporary license.

**38-3327 Applicant; reciprocity; requirements; military spouse; temporary license.**

(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.

(3) An applicant who is a military spouse may apply for a temporary license to practice veterinary medicine and surgery or to practice as a licensed veterinary technician as provided in section 38-129.01.

**Source:** Laws 2007, LB463, § 1109; Laws 2017, LB88, § 90.  
Operative date April 26, 2017.

### ARTICLE 34

#### GENETIC COUNSELING PRACTICE ACT

Section

38-3419. Reciprocity; individual practicing before January 1, 2013; licensure; qualification; military spouse; temporary license.

**38-3419 Reciprocity; individual practicing before January 1, 2013; licensure; qualification; military spouse; temporary license.**

(1) The department, with the recommendation of the state board, may issue a license under the Genetic Counseling Practice Act based on licensure in another jurisdiction to an individual who meets the requirements of the Genetic Counseling Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the state board.

(2) An individual practicing genetic counseling in Nebraska before January 1, 2013, may apply for licensure under the act if, on or before July 1, 2013, he or she:

(a) Provides satisfactory evidence to the state board that he or she (i) has practiced genetic counseling for a minimum of ten years preceding January 1, 2013, (ii) has a postbaccalaureate degree at the master’s level or higher in genetics or a related field of study, and (iii) has never failed the certification examination;

(b) Submits three letters of recommendation from at least one individual practicing genetic counseling who qualifies for licensure under the Genetic Counseling Practice Act and either a clinical geneticist or medical geneticist certified by the national medical genetics board. An individual submitting a letter of recommendation shall have worked with the applicant in an employment setting during at least five of the ten years preceding submission of the letter and be able to attest to the applicant’s competency in providing genetic counseling; and

(c) Provides documentation of attending approved continuing education programs within the five years preceding application.

(3) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 2012, LB831, § 19; Laws 2017, LB88, § 91.  
Operative date April 26, 2017.

**ARTICLE 36**

**INTERSTATE MEDICAL LICENSURE COMPACT**

- Section
- 38-3601. Compact; citation.
- 38-3602. Purposes of Interstate Medical Licensure Compact.
- 38-3603. Terms, defined.
- 38-3604. Physician; expedited license; eligibility requirements; failure to meet requirements; effect.
- 38-3605. Physician; designate state of principal license.
- 38-3606. Physician; file application; member board; duties; criminal background check; fees; issuance of license.
- 38-3607. Fee; rules.
- 38-3608. Physician; renewal of expedited license; renewal process; fees; rules.
- 38-3609. Data base; contents; public action or complaints; member boards; duties; confidentiality.
- 38-3610. Member board; joint investigations; powers.
- 38-3611. Disciplinary action; unprofessional conduct; reinstatement of license; procedure.
- 38-3612. Interstate Medical Licensure Compact Commission; created; representatives; qualifications; meetings; notice; minutes; executive committee.
- 38-3613. Interstate commission; duty and power.
- 38-3614. Annual assessment; levy; rule; audit.
- 38-3615. Interstate commission; adopt bylaws; officers; immunity; duty to defend; hold harmless.
- 38-3616. Rules; promulgation; judicial review.
- 38-3617. Enforcement of Interstate Medical Licensure Compact; interstate commission; receive service of process.
- 38-3618. Interstate commission; enforcement powers; initiate legal action; remedies available.
- 38-3619. Grounds for default; notice; failure to cure; termination from compact; costs; appeal.
- 38-3620. Disputes; interstate commission; duties; rules.
- 38-3621. Eligibility to become member state; when compact effective; amendments to compact.

## Section

- 38-3622. Withdrawal from Interstate Medical Licensure Compact; procedure; responsibilities; reinstatement; rules.
- 38-3623. Dissolution of Interstate Medical Licensure Compact; effect.
- 38-3624. Severability; construction.
- 38-3625. Effect on other laws of member state.

**38-3601 Compact; citation.**

Sections 38-3601 to 38-3625 shall be known and may be cited as the Interstate Medical Licensure Compact.

**Source:** Laws 2017, LB88, § 1.

Operative date August 24, 2017.

**38-3602 Purposes of Interstate Medical Licensure Compact.**

The purposes of the Interstate Medical Licensure Compact are, through means of joint and cooperative action among the member states of the compact (1) to develop a comprehensive process that complements the existing licensing and regulatory authority of state medical boards and that provides a streamlined process that allows physicians to become licensed in multiple states, thereby enhancing the portability of a medical license and ensuring the safety of patients, (2) to create another pathway for licensure that does not otherwise change a state's existing medicine and surgery practice act, (3) to adopt the prevailing standard for licensure, affirm that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter, and require the physician to be under the jurisdiction of the state medical board where the patient is located, (4) to ensure that state medical boards that participate in the compact retain the jurisdiction to impose an adverse action against a license to practice medicine in that state issued to a physician through the procedures in the compact, and (5) to create the Interstate Medical Licensure Compact Commission.

**Source:** Laws 2017, LB88, § 2.

Operative date August 24, 2017.

**38-3603 Terms, defined.**

For purposes of the Interstate Medical Licensure Compact:

- (a) Bylaws means those bylaws established by the interstate commission pursuant to section 38-3612 for its governance or for directing and controlling its actions and conduct;
- (b) Commissioner means the voting representative appointed by each member board pursuant to section 38-3612;
- (c) Conviction means a finding by a court that an individual is guilty of a criminal offense through adjudication or entry of a plea of guilty or no contest to the charge by the offender. Evidence of an entry of a conviction of a criminal offense by the court shall be considered final for purposes of disciplinary action by a member board;
- (d) Expedited license means a full and unrestricted medical license granted by a member state to an eligible physician through the process set forth in the compact;
- (e) Interstate commission means the interstate commission created pursuant to section 38-3612;

(f) License means authorization by a state for a physician to engage in the practice of medicine, which would be unlawful without the authorization;

(g) Medicine and surgery practice act means laws and regulations governing the practice of medicine within a member state;

(h) Member board means a state agency in a member state that acts in the sovereign interests of the state by protecting the public through licensure, regulation, and education of physicians as directed by the state government;

(i) Member state means a state that has enacted the compact;

(j) Practice of medicine means the clinical prevention, diagnosis, or treatment of human disease, injury, or condition requiring a physician to obtain and maintain a license in compliance with the medicine and surgery practice act of a member state;

(k) Physician means any person who:

(1) Is a graduate of a medical school accredited by the Liaison Committee on Medical Education, the Commission on Osteopathic College Accreditation, or a medical school listed in the International Medical Education Directory or its equivalent;

(2) Passed each component of the United States Medical Licensing Examination or the Comprehensive Osteopathic Medical Licensing Examination within three attempts, or any of its predecessor examinations accepted by a state medical board as an equivalent examination for licensure purposes;

(3) Successfully completed graduate medical education approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;

(4) Holds specialty certification or a time-unlimited specialty certificate recognized by the American Board of Medical Specialties or the American Osteopathic Association's Bureau of Osteopathic Specialists;

(5) Possesses a full and unrestricted license to engage in the practice of medicine issued by a member board;

(6) Has never been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;

(7) Has never had a license authorizing the practice of medicine subjected to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license;

(8) Has never had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration; and

(9) Is not under active investigation by a licensing agency or law enforcement authority in any state, federal, or foreign jurisdiction;

(l) Offense means a felony, gross misdemeanor, or crime of moral turpitude;

(m) Rule means a written statement by the interstate commission promulgated pursuant to section 38-3613 that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the interstate commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule;

(n) State means any state, commonwealth, district, or territory of the United States; and

(o) State of principal license means a member state where a physician holds a license to practice medicine and which has been designated as such by the physician for purposes of registration and participation in the compact.

**Source:** Laws 2017, LB88, § 3.

Operative date August 24, 2017.

**38-3604 Physician; expedited license; eligibility requirements; failure to meet requirements; effect.**

(a) A physician must meet the eligibility requirements as defined in subdivision (k) of section 38-3603 to receive an expedited license under the terms and provisions of the Interstate Medical Licensure Compact.

(b) A physician who does not meet the requirements of subdivision (k) of section 38-3603 may obtain a license to practice medicine in a member state if the individual complies with all laws and requirements, other than the compact, relating to the issuance of a license to practice medicine in that state.

**Source:** Laws 2017, LB88, § 4.

Operative date August 24, 2017.

**38-3605 Physician; designate state of principal license.**

(a) A physician shall designate a member state as the state of principal license for purposes of registration for expedited licensure through the Interstate Medical Licensure Compact if the physician possesses a full and unrestricted license to practice medicine in that state, and the state is:

- (1) The state of primary residence for the physician;
- (2) The state where at least twenty-five percent of the practice of medicine occurs;
- (3) The location of the physician's employer;
- (4) If no state qualifies under subdivision (1), (2), or (3) of this subsection, the state designated as state of residence for purpose of federal income tax.

(b) A physician may redesignate a member state as state of principal license at any time, as long as the state meets the requirements in subsection (a) of this section.

(c) The interstate commission is authorized to develop rules to facilitate redesignation of another member state as the state of principal license.

**Source:** Laws 2017, LB88, § 5.

Operative date August 24, 2017.

**38-3606 Physician; file application; member board; duties; criminal background check; fees; issuance of license.**

(a) A physician seeking licensure through the Interstate Medical Licensure Compact shall file an application for an expedited license with the member board of the state selected by the physician as the state of principal license.

(b) Upon receipt of an application for an expedited license, the member board within the state selected as the state of principal license shall evaluate whether the physician is eligible for expedited licensure and issue a letter of

qualification, verifying or denying the physician's eligibility, to the interstate commission.

(i) Static qualifications, which include verification of medical education, graduate medical education, results of any medical or licensing examination, and other qualifications as determined by the interstate commission through rule, shall not be subject to additional primary source verification where already primary source verified by the state of principal license.

(ii) The member board within the state selected as the state of principal license shall, in the course of verifying eligibility, perform a criminal background check of an applicant, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, with the exception of federal employees who have suitability determination in accordance with 5 C.F.R. 731.202.

(iii) Appeal on the determination of eligibility shall be made to the member state where the application was filed and shall be subject to the law of that state.

(c) Upon verification in subsection (b) of this section, physicians eligible for an expedited license shall complete the registration process established by the interstate commission to receive a license in a member state selected pursuant to subsection (a) of this section, including the payment of any applicable fees.

(d) After receiving verification of eligibility under subsection (b) of this section and any fees under subsection (c) of this section, a member board shall issue an expedited license to the physician. This license shall authorize the physician to practice medicine in the issuing state consistent with the medicine and surgery practice act and all applicable laws and regulations of the issuing member board and member state.

(e) An expedited license shall be valid for a period consistent with the licensure period in the member state and in the same manner as required for other physicians holding a full and unrestricted license within the member state.

(f) An expedited license obtained through the compact shall be terminated if a physician fails to maintain a license in the state of principal licensure for a nondisciplinary reason, without redesignation of a new state of principal licensure.

(g) The interstate commission is authorized to develop rules regarding the application process, including payment of any applicable fees, and the issuance of an expedited license.

**Source:** Laws 2017, LB88, § 6.

Operative date August 24, 2017.

**38-3607 Fee; rules.**

(a) A member state issuing an expedited license authorizing the practice of medicine in that state may impose a fee for a license issued or renewed through the Interstate Medical Licensure Compact.

(b) The interstate commission is authorized to develop rules regarding fees for expedited licenses.

**Source:** Laws 2017, LB88, § 7.

Operative date August 24, 2017.



**38-3608 Physician; renewal of expedited license; renewal process; fees; rules.**

(a) A physician seeking to renew an expedited license granted in a member state shall complete a renewal process with the interstate commission if the physician:

- (1) Maintains a full and unrestricted license in a state of principal license;
- (2) Has not been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;
- (3) Has not had a license authorizing the practice of medicine subject to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license; and
- (4) Has not had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration.

(b) Physicians shall comply with all continuing professional development or continuing medical education requirements for renewal of a license issued by a member state.

(c) The interstate commission shall collect any renewal fees charged for the renewal of a license and distribute the fees to the applicable member board.

(d) Upon receipt of any renewal fees collected in subsection (c) of this section, a member board shall renew the physician's license.

(e) Physician information collected by the interstate commission during the renewal process will be distributed to all member boards.

(f) The interstate commission is authorized to develop rules to address renewal of licenses obtained through the Interstate Medical Licensure Compact.

**Source:** Laws 2017, LB88, § 8.

Operative date August 24, 2017.

**38-3609 Data base; contents; public action or complaints; member boards; duties; confidentiality.**

(a) The interstate commission shall establish a data base of all physicians licensed, or who have applied for licensure, under section 38-3606.

(b) Notwithstanding any other provision of law, member boards shall report to the interstate commission any public action or complaints against a licensed physician who has applied or received an expedited license through the Interstate Medical Licensure Compact.

(c) Member boards shall report disciplinary or investigatory information determined as necessary and proper by rule of the interstate commission.

(d) Member boards may report any nonpublic complaint, disciplinary, or investigatory information not required by subsection (c) of this section to the interstate commission.

(e) Member boards shall share complaint or disciplinary information about a physician upon request of another member board.

(f) All information provided to the interstate commission or distributed by member boards shall be confidential, filed under seal, and used only for investigatory or disciplinary matters.

(g) The interstate commission is authorized to develop rules for mandated or discretionary sharing of information by member boards.

**Source:** Laws 2017, LB88, § 9.

Operative date August 24, 2017.

**38-3610 Member board; joint investigations; powers.**

(a) Licensure and disciplinary records of physicians are deemed investigative.

(b) In addition to the authority granted to a member board by its respective medicine and surgery practice act or other applicable state law, a member board may participate with other member boards in joint investigations of physicians licensed by the member boards.

(c) A subpoena issued by a member state shall be enforceable in other member states.

(d) Member boards may share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Interstate Medical Licensure Compact.

(e) Any member state may investigate actual or alleged violations of the statutes authorizing the practice of medicine in any other member state in which a physician holds a license to practice medicine.

**Source:** Laws 2017, LB88, § 10.

Operative date August 24, 2017.

**38-3611 Disciplinary action; unprofessional conduct; reinstatement of license; procedure.**

(a) Any disciplinary action taken by any member board against a physician licensed through the Interstate Medical Licensure Compact shall be deemed unprofessional conduct which may be subject to discipline by other member boards, in addition to any violation of the medicine and surgery practice act or regulations in that state.

(b) If a license granted to a physician by the member board in the state of principal license is revoked, surrendered or relinquished in lieu of discipline, or suspended, then all licenses issued to the physician by member boards shall automatically be placed, without further action necessary by any member board, on the same status. If the member board in the state of principal license subsequently reinstates the physician's license, a license issued to the physician by any other member board shall remain encumbered until that respective member board takes action to reinstate the license in a manner consistent with the medicine and surgery practice act of that state.

(c) If disciplinary action is taken against a physician by a member board not in the state of principal license, any other member board may deem the action conclusive as to matter of law and fact decided, and:

(i) Impose the same or lesser sanction against the physician so long as such sanctions are consistent with the medicine and surgery practice act of that state; or

(ii) Pursue separate disciplinary action against the physician under its respective medicine and surgery practice act, regardless of the action taken in other member states.

(d) If a license granted to a physician by a member board is revoked, surrendered or relinquished in lieu of discipline, or suspended, then any license issued to the physician by any other member board shall be suspended, automatically and immediately without further action necessary by the other member board, for ninety days upon entry of the order by the disciplining board, to permit the member board to investigate the basis for the action under the medicine and surgery practice act of that state. A member board may terminate the automatic suspension of the license it issued prior to the completion of the ninety-day suspension period in a manner consistent with the medicine and surgery practice act of that state.

**Source:** Laws 2017, LB88, § 11.

Operative date August 24, 2017.

**38-3612 Interstate Medical Licensure Compact Commission; created; representatives; qualifications; meetings; notice; minutes; executive committee.**

(a) The member states hereby create the Interstate Medical Licensure Compact Commission.

(b) The purpose of the interstate commission is the administration of the Interstate Medical Licensure Compact, which is a discretionary state function.

(c) The interstate commission shall be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth in the compact, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of the compact.

(d) The interstate commission shall consist of two voting representatives appointed by each member state who shall serve as commissioners. In states where allopathic and osteopathic physicians are regulated by separate member boards, or if the licensing and disciplinary authority is split between multiple member boards within a member state, the member state shall appoint one representative from each member board. A commissioner shall be:

- (1) A physician appointed to a member board;
- (2) An executive director, executive secretary, or similar executive of a member board; or
- (3) A member of the public appointed to a member board.

(e) The interstate commission shall meet at least once each calendar year. A portion of this meeting shall be a business meeting to address such matters as may properly come before the commission, including the election of officers. The chairperson may call additional meetings and shall call for a meeting upon the request of a majority of the member states.

(f) The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or electronic communication.

(g) Each commissioner participating at a meeting of the interstate commission is entitled to one vote. A majority of commissioners shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission. A commissioner shall not delegate a vote to another commissioner. In the absence of its commissioner, a member state may delegate voting authority for a specified meeting to another person from that state who shall meet the requirements of subsection (d) of this section.

(h) The interstate commission shall provide public notice of all meetings and all meetings shall be open to the public. The interstate commission may close a meeting, in full or in portion, where it determines by a two-thirds vote of the commissioners present that an open meeting would be likely to:

(1) Relate solely to the internal personnel practices and procedures of the interstate commission;

(2) Discuss matters specifically exempted from disclosure by federal statute;

(3) Discuss trade secrets, commercial, or financial information that is privileged or confidential;

(4) Involve accusing a person of a crime, or formally censuring a person;

(5) Discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Discuss investigative records compiled for law enforcement purposes; or

(7) Specifically relate to the participation in a civil action or other legal proceeding.

(i) The interstate commission shall keep minutes which shall fully describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, including record of any roll call votes.

(j) The interstate commission shall make its information and official records, to the extent not otherwise designated in the compact or by its rules, available to the public for inspection.

(k) The interstate commission shall establish an executive committee, which shall include officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission, with the exception of rulemaking, during periods when the interstate commission is not in session. When acting on behalf of the interstate commission, the executive committee shall oversee the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as necessary.

(l) The interstate commission may establish other committees for governance and administration of the compact.

**Source:** Laws 2017, LB88, § 12.

Operative date August 24, 2017.

### **38-3613 Interstate commission; duty and power.**

The interstate commission shall have the duty and power to:

(a) Oversee and maintain the administration of the Interstate Medical Licensure Compact;

(b) Promulgate rules which shall be binding to the extent and in the manner provided for in the compact;

(c) Issue, upon the request of a member state or member board, advisory opinions concerning the meaning or interpretation of the compact, its bylaws, rules, and actions;

(d) Enforce compliance with compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process;

- (e) Establish and appoint committees including, but not limited to, an executive committee as required by section 38-3612, which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties;
- (f) Pay, or provide for the payment of, the expenses related to the establishment, organization, and ongoing activities of the interstate commission;
- (g) Establish and maintain one or more offices;
- (h) Borrow, accept, hire, or contract for services of personnel;
- (i) Purchase and maintain insurance and bonds;
- (j) Employ an executive director who shall have such powers to employ, select or appoint employees, agents, or consultants, and to determine their qualifications, define their duties, and fix their compensation;
- (k) Establish personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;
- (l) Accept donations and grants of money, equipment, supplies, materials and services, and to receive, utilize, and dispose of it in a manner consistent with the conflict of interest policies established by the interstate commission;
- (m) Lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use, any property, real, personal, or mixed;
- (n) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
- (o) Establish a budget and make expenditures;
- (p) Adopt a seal and bylaws governing the management and operation of the interstate commission;
- (q) Report annually to the legislatures and governors of the member states concerning the activities of the interstate commission during the preceding year. Such reports shall also include reports of financial audits and any recommendations that may have been adopted by the interstate commission;
- (r) Coordinate education, training, and public awareness regarding the compact, its implementation, and its operation;
- (s) Maintain records in accordance with the bylaws;
- (t) Seek and obtain trademarks, copyrights, and patents; and
- (u) Perform such functions as may be necessary or appropriate to achieve the purposes of the compact.

**Source:** Laws 2017, LB88, § 13.

Operative date August 24, 2017.

**38-3614 Annual assessment; levy; rule; audit.**

- (a) The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff. The total assessment must be sufficient to cover the annual budget approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states.
- (b) The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same.

(c) The interstate commission shall not pledge the credit of any of the member states, except by, and with the authority of, the member state.

(d) The interstate commission shall be subject to a yearly financial audit conducted by a certified or licensed public accountant and the report of the audit shall be included in the annual report of the interstate commission.

**Source:** Laws 2017, LB88, § 14.

Operative date August 24, 2017.

**38-3615 Interstate commission; adopt bylaws; officers; immunity; duty to defend; hold harmless.**

(a) The interstate commission shall, by a majority of commissioners present and voting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the Interstate Medical Licensure Compact within twelve months of the first interstate commission meeting.

(b) The interstate commission shall elect or appoint annually from among its commissioners a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson, or in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the interstate commission.

(c) Officers selected in subsection (b) of this section shall serve without remuneration from the interstate commission.

(d) The officers and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of, or relating to, an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties, or responsibilities; provided that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(1) The liability of the executive director and employees of the interstate commission or representatives of the interstate commission, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state, may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The interstate commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(2) The interstate commission shall defend the executive director, its employees, and subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend such interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error,

or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(3) To the extent not covered by the state involved, member state, or the interstate commission, the representatives or employees of the interstate commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

**Source:** Laws 2017, LB88, § 15.  
Operative date August 24, 2017.

**38-3616 Rules; promulgation; judicial review.**

(a) The interstate commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the Interstate Medical Licensure Compact. Notwithstanding the foregoing, in the event the interstate commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the compact, or the powers granted hereunder, then such an action by the interstate commission shall be invalid and have no force or effect.

(b) Rules deemed appropriate for the operations of the interstate commission shall be made pursuant to a rulemaking process that substantially conforms to the Revised Model State Administrative Procedure Act of 2010 and subsequent amendments thereto.

(c) Not later than thirty days after a rule is promulgated, any person may file a petition for judicial review of the rule in the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices. The filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the authority granted to the interstate commission.

**Source:** Laws 2017, LB88, § 16.  
Operative date August 24, 2017.

**38-3617 Enforcement of Interstate Medical Licensure Compact; interstate commission; receive service of process.**

(a) The executive, legislative, and judicial branches of state government in each member state shall enforce the Interstate Medical Licensure Compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of the compact and the rules promulgated under the compact shall have standing as statutory law but shall not override existing state authority to regulate the practice of medicine.

(b) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the

subject matter of the compact which may affect the powers, responsibilities or actions of the interstate commission.

(c) The interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission shall render a judgment or order void as to the interstate commission, the compact, or promulgated rules.

**Source:** Laws 2017, LB88, § 17.

Operative date August 24, 2017.

**38-3618 Interstate commission; enforcement powers; initiate legal action; remedies available.**

(a) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the Interstate Medical Licensure Compact.

(b) The interstate commission may, by majority vote of the commissioners, initiate legal action in the United States District Court for the District of Columbia, or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with the provisions of the compact, and its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(c) The remedies in the compact shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

**Source:** Laws 2017, LB88, § 18.

Operative date August 24, 2017.

**38-3619 Grounds for default; notice; failure to cure; termination from compact; costs; appeal.**

(a) The grounds for default include, but are not limited to, failure of a member state to perform such obligations or responsibilities imposed upon it by the Interstate Medical Licensure Compact, or the rules and bylaws of the interstate commission promulgated under the compact.

(b) If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the compact, or the bylaws or promulgated rules, the interstate commission shall:

(1) Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default, and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default; and

(2) Provide remedial training and specific technical assistance regarding the default.

(c) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the commissioners and all rights, privileges, and benefits conferred by the compact shall terminate on the effective date of termination. A cure of the default does



not relieve the offending state of obligations or liabilities incurred during the period of the default.

(d) Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to terminate shall be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(e) The interstate commission shall establish rules and procedures to address licenses and physicians that are materially impacted by the termination of a member state, or the withdrawal of a member state.

(f) The member state which has been terminated is responsible for all dues, obligations, and liabilities incurred through the effective date of termination including obligations, the performance of which extends beyond the effective date of termination.

(g) The interstate commission shall not bear any costs relating to any state that has been found to be in default or which has been terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(h) The defaulting state may appeal the action of the interstate commission by petitioning the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

**Source:** Laws 2017, LB88, § 19.

Operative date August 24, 2017.

### **38-3620 Disputes; interstate commission; duties; rules.**

(a) The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the Interstate Medical Licensure Compact and which may arise among member states or member boards.

(b) The interstate commission shall promulgate rules providing for both mediation and binding dispute resolution as appropriate.

**Source:** Laws 2017, LB88, § 20.

Operative date August 24, 2017.

### **38-3621 Eligibility to become member state; when compact effective; amendments to compact.**

(a) Any state is eligible to become a member state of the Interstate Medical Licensure Compact.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than seven states. Thereafter, it shall become effective and binding on a state upon enactment of the compact into law by that state.

(c) The governors of nonmember states, or their designees, shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states.

(d) The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and

binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

**Source:** Laws 2017, LB88, § 21.  
Operative date August 24, 2017.

**38-3622 Withdrawal from Interstate Medical Licensure Compact; procedure; responsibilities; reinstatement; rules.**

(a) Once effective, the Interstate Medical Licensure Compact shall continue in force and remain binding upon each and every member state, except that a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(b) Withdrawal from the compact shall be by the enactment of a statute repealing the same, but shall not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member state.

(c) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing the compact in the withdrawing state.

(d) The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty days of its receipt of notice provided under subsection (c) of this section.

(e) The withdrawing state is responsible for all dues, obligations, and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

(f) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

(g) The interstate commission is authorized to develop rules to address the impact of the withdrawal of a member state on licenses granted in other member states to physicians who designated the withdrawing member state as the state of principal license.

**Source:** Laws 2017, LB88, § 22.  
Operative date August 24, 2017.

**38-3623 Dissolution of Interstate Medical Licensure Compact; effect.**

(a) The Interstate Medical Licensure Compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state.

(b) Upon the dissolution of the compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

**Source:** Laws 2017, LB88, § 23.  
Operative date August 24, 2017.

**38-3624 Severability; construction.**

(a) The provisions of the Interstate Medical Licensure Compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of the compact shall be liberally construed to effectuate its purposes.

(c) Nothing in the compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

**Source:** Laws 2017, LB88, § 24.

Operative date August 24, 2017.

### **38-3625 Effect on other laws of member state.**

(a) Nothing in the Interstate Medical Licensure Compact prevents the enforcement of any other law of a member state that is not inconsistent with the compact.

(b) All laws in a member state in conflict with the compact are superseded to the extent of the conflict.

(c) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the commission, are binding upon the member states.

(d) All agreements between the interstate commission and the member states are binding in accordance with their terms.

(e) In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

**Source:** Laws 2017, LB88, § 25.

Operative date August 24, 2017.

## **ARTICLE 37**

### **DIALYSIS PATIENT CARE TECHNICIAN REGISTRATION ACT**

#### Section

38-3701. Act, how cited.

38-3702. Purpose of act.

38-3703. Terms, defined.

38-3704. Dialysis patient care technician; powers.

38-3705. Dialysis patient care technician; qualifications.

38-3706. Dialysis patient care technician; registration; application; fee; duties; licensure as nurse; effect.

38-3707. Dialysis Patient Care Technician Registry; contents.

### **38-3701 Act, how cited.**

Sections 38-3701 to 38-3707 shall be known and may be cited as the Dialysis Patient Care Technician Registration Act.

**Source:** Laws 2017, LB255, § 1.

Effective date May 11, 2017.

### **38-3702 Purpose of act.**

The purpose of the Dialysis Patient Care Technician Registration Act is to ensure the health, safety, and welfare of the public by providing for the accurate, cost-effective, efficient, and safe utilization of dialysis patient care

technicians in the administration of hemodialysis. The act applies to dialysis facilities in which hemodialysis is provided.

**Source:** Laws 2017, LB255, § 2.  
Effective date May 11, 2017.

**38-3703 Terms, defined.**

For purposes of the Dialysis Patient Care Technician Registration Act:

(1) Dialysis patient care technician means a person who meets the requirements of section 38-3705; and

(2) Facility means a health care facility as defined in section 71-413 providing hemodialysis services.

**Source:** Laws 2017, LB255, § 3.  
Effective date May 11, 2017.

**38-3704 Dialysis patient care technician; powers.**

A dialysis patient care technician may administer hemodialysis under the authority of a registered nurse licensed pursuant to the Nurse Practice Act who may delegate tasks based on nursing judgment to a dialysis patient care technician based on the technician's education, knowledge, training, and skill.

**Source:** Laws 2017, LB255, § 4.  
Effective date May 11, 2017.

**Cross References**

**Nurse Practice Act**, see section 38-2201.

**38-3705 Dialysis patient care technician; qualifications.**

The minimum requirements for a dialysis patient care technician are as follows: (1) Possession of a high school diploma or a general educational development certificate, (2) training which follows national recommendations for dialysis patient care technicians and is conducted primarily in the work setting, (3) obtaining national certification by successful passage of a certification examination within eighteen months after becoming employed as a dialysis patient care technician, and (4) recertification at intervals required by the organization providing the certification examination including no fewer than thirty and no more than forty patient contact hours since the previous certification or recertification.

**Source:** Laws 2017, LB255, § 5.  
Effective date May 11, 2017.

**38-3706 Dialysis patient care technician; registration; application; fee; duties; licensure as nurse; effect.**

(1) To register as a dialysis patient care technician, an individual shall (a) possess a high school diploma or a general educational development certificate, (b) demonstrate that he or she is (i) employed as a dialysis patient care technician or (ii) enrolled in a training course as described in subdivision (2) of section 38-3705, (c) file an application with the department, and (d) pay the applicable fee.

(2) An applicant or a dialysis patient care technician shall report to the department, in writing, any conviction for a felony or misdemeanor. A conviction

tion is not a disqualification for placement on the registry unless it relates to the standards identified in section 38-3705 or it reflects on the moral character of the applicant or dialysis patient care technician.

(3) An applicant or a dialysis patient care technician may report any pardon or setting aside of a conviction to the department. If a pardon or setting aside has been obtained, the conviction for which it was obtained shall not be maintained on the Dialysis Patient Care Technician Registry.

(4) If a person registered as a dialysis patient care technician becomes licensed as a registered nurse or licensed practical nurse, his or her registration as a dialysis patient care technician becomes null and void as of the date of licensure as a registered nurse or a licensed practical nurse.

**Source:** Laws 2017, LB255, § 6.  
Effective date May 11, 2017.

**38-3707 Dialysis Patient Care Technician Registry; contents.**

(1) The department shall list each dialysis patient care technician registration on the Dialysis Patient Care Technician 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.

(2) The registry shall contain the following information on each registrant: (a) The individual's full name; (b) any conviction of a felony or misdemeanor reported to the department; (c) a certificate showing completion of a nationally recognized training program; and (d) a certificate of completion of a nationally commercially available dialysis patient care technician certification examination.

(3) Nothing in the Dialysis Patient Care Technician Registration Act shall be construed to require a dialysis patient care technician to register in the Medication Aide Registry.

**Source:** Laws 2017, LB255, § 7.  
Effective date May 11, 2017.

**Cross References**

**Medication Aide Registry,** see section 71-6727.



## CHAPTER 39

### HIGHWAYS AND BRIDGES

#### Article.

1. General Highway Provisions. 39-102, 39-103.
2. Signs. 39-202 to 39-225.
3. Miscellaneous Penalty Provisions. 39-308 to 39-312.
8. Bridges.
  - (a) Miscellaneous Provisions. 39-805.
  - (b) Contracts for Construction and Repair of Bridges. 39-810 to 39-826.02.
  - (g) State Aid Bridges. 39-847, 39-847.01.
  - (k) Interstate Bridge Act of 1959. 39-891 to 39-893.
10. Rural Mail Routes. 39-1010, 39-1011.
11. State Highway Commission. 39-1101, 39-1110.
13. State Highways.
  - (a) Intent, Definitions, and Rules. 39-1301, 39-1302.
  - (b) Intergovernmental Relations. 39-1306.01 to 39-1306.03.
  - (c) Designation of System. 39-1309, 39-1311.
  - (e) Land Acquisition. 39-1320, 39-1323.01.
  - (f) Control of Access. 39-1328.01, 39-1328.02.
  - (g) Construction and Maintenance. 39-1345.01.
  - (h) Contracts. 39-1350, 39-1353.
  - (j) Miscellaneous. 39-1359.01 to 39-1365.02.
  - (l) State Recreation Roads. 39-1390, 39-1392.
14. County Roads. General Provisions. 39-1407.
15. County Roads. Organization and Administration.
  - (a) County Highway Board. 39-1503.
  - (b) County Highway Superintendent. 39-1506.
17. County Roads. Land Acquisition, Establishment, Alteration, Survey, Relocation, Vacation, and Abandonment.
  - (a) Land Acquisition. 39-1703.
  - (b) Establishment, Alteration, and Survey. 39-1713.
18. County Roads. Maintenance. 39-1804, 39-1811.
19. County Roads. Road Finances. 39-1901.
20. County Road Classification. 39-2001, 39-2002.
21. Functional Classification. 39-2103 to 39-2124.
22. Nebraska Highway Bonds. 39-2215, 39-2224.
23. County Highway and City Street Superintendents Act. 39-2305, 39-2310.
25. Distribution to Political Subdivisions.
  - (a) Roads. 39-2504 to 39-2508.
  - (b) Streets. 39-2514 to 39-2518.
26. Junkyards. 39-2602.
27. Build Nebraska Act. 39-2702.
28. Transportation Innovation Act. 39-2802, 39-2806.

#### ARTICLE 1

#### GENERAL HIGHWAY PROVISIONS

#### Section

- 39-102. Rules and regulations; promulgated by Department of Transportation to promote public safety.
- 39-103. Department of Transportation; rules and regulations; violation; penalty.

**39-102 Rules and regulations; promulgated by Department of Transportation to promote public safety.**

In order to promote public safety, to preserve and protect state highways, and to prevent immoderate and destructive use of state highways, the Department of Transportation may formulate, adopt, and promulgate rules and regulations in regard to the use of and travel upon the state highways consistent with Chapter 39 and the Nebraska Rules of the Road. Such rules and regulations may include specifications, standards, limitations, conditions, requirements, definitions, enumerations, descriptions, procedures, prohibitions, restrictions, instructions, controls, guidelines, and classifications relative to the following:

(1) The issuance or denial of special permits for the travel of vehicles or objects exceeding statutory size and weight capacities upon the highways as authorized by section 60-6,298;

(2) Qualification and prequalification of contractors, including, but not limited to, maximum and minimum qualifications, ratings, classifications, classes of contractors or classes of work, or both, and procedures to be followed;

(3) The setting of special load restrictions as provided in Chapter 39 and the Nebraska Rules of the Road;

(4) The placing, location, occupancy, erection, construction, or maintenance, upon any highway or area within the right-of-way, of any pole line, pipeline, or other utility located above, on, or under the level of the ground in such area;

(5) Protection and preservation of trees, shrubbery, plantings, buildings, structures, and all other things located upon any highway or any portion of the right-of-way of any highway by the department;

(6) Applications for the location of, and location of, private driveways, commercial approach roads, facilities, things, or appurtenances upon the right-of-way of state highways, including, but not limited to, procedures for applications for permits therefor and standards for the issuance or denial of such permits, based on highway traffic safety, and the foregoing may include reapplication for permits and applications for permits for existing facilities, and in any event, issuance of permits may also be conditioned upon approval of the design of such facilities;

(7) Outdoor advertising signs, displays, and devices in areas where the department is authorized by law to exercise such controls; and

(8) The Grade Crossing Protection Fund provided for in section 74-1317, including, but not limited to, authority for application, procedures on application, effect of application, procedures for and effect of granting such applications, and standards and specifications governing the type of control thereunder.

This section shall not amend or derogate any other grant of power or authority to the department to make or promulgate rules and regulations but shall be additional and supplementary thereto.

**Source:** Laws 1973, LB 45, § 99; Laws 1985, LB 395, § 1; R.S.1943, (1988), § 39-699; Laws 1993, LB 370, § 17; Laws 2017, LB339, § 83.

Operative date July 1, 2017.

**Cross References**

Nebraska Rules of the Road, see section 60-601.



**39-103 Department of Transportation; rules and regulations; violation; penalty.**

Any person who operates a vehicle upon any highway in violation of the rules and regulations of the Department of Transportation governing the use of state highways shall be guilty of a Class III misdemeanor.

**Source:** Laws 1967, c. 235, § 4, p. 633; R.R.S.1943, § 39-7,134.01; Laws 1977, LB 41, § 17; R.S.1943, (1988), § 39-699.01; Laws 1993, LB 370, § 18; Laws 2017, LB339, § 84.  
Operative date July 1, 2017.

**ARTICLE 2**

**SIGNS**

Section

- 39-202. Advertising signs, displays, or devices; visible from highway; prohibited; exceptions; permitted signs enumerated.
- 39-203. Advertising sign; compensation upon removal; Department of Transportation; make expenditures; when.
- 39-204. Informational signs; erection; conform with rules and regulations; minimum service requirements.
- 39-205. Informational signs; business signs; posted by department; costs and fees; disposition; notice of available space.
- 39-206. Informational signs; erection; conditions; fee.
- 39-207. Tourist-oriented directional sign panels; erection and maintenance.
- 39-208. Sign panels; erection; conditions; fee; disposition.
- 39-210. Sign panels; qualification of activities; minimum requirements; violation; effect.
- 39-211. Sign panels; rules and regulations.
- 39-212. Acquisition of interest in property; control of advertising outside of right-of-way; compensation; removal; costs; payment by department.
- 39-213. Control of advertising outside of right-of-way; agreements authorized; commercial and industrial zones; provisions.
- 39-214. Control of advertising outside of right-of-way; adoption of rules and regulations by Department of Transportation; minimum requirements.
- 39-216. Control of advertising visible from main-traveled way; unlawful; when permitted; written lease and permit from Department of Transportation.
- 39-217. Scenic byway designations.
- 39-218. Scenic byways; prohibition of signs visible from main-traveled way; exceptions.
- 39-219. Control of advertising outside of right-of-way; erected prior to March 27, 1972; effect.
- 39-220. Control of advertising visible from main-traveled way; permit; fee; rules and regulations; exceptions.
- 39-221. Control of advertising outside of right-of-way; compliance; damages; violations; penalty.
- 39-222. Control of advertising outside of right-of-way; eminent domain; authorized.
- 39-223. Governmental or quasi-governmental agency; removal of signs, displays, or devices along Highway Beautification Control System; exemption; petition.
- 39-224. Department of Transportation; retention of signs, displays, or devices; request.
- 39-225. Department of Transportation; removal of nonconforming signs; program.

**39-202 Advertising signs, displays, or devices; visible from highway; prohibited; exceptions; permitted signs enumerated.**

(1) Except as provided in sections 39-202 to 39-205, 39-215, 39-216, and 39-220, the erection or maintenance of any advertising sign, display, or device beyond six hundred sixty feet of the right-of-way of the National System of Interstate and Defense Highways and visible from the main-traveled way of such highway system is prohibited.

(2) The following signs shall be permitted:

(a) Directional and official signs to include, but not be limited to, signs and notices pertaining to natural wonders, scenic attractions, and historical attractions. Such signs shall comply with standards and criteria established by regulations of the Department of Transportation as promulgated from time to time;

(b) Signs, displays, and devices advertising the sale or lease of property upon which such media are located;

(c) Signs, displays, and devices advertising activities conducted on the property on which such media are located; and

(d) Signs in existence in accordance with sections 39-212 to 39-222, to include landmark signs, signs on farm structures, markers, and plaques of historical or artistic significance.

(3) For purposes of this section, visible shall mean the message or advertising content of an advertising sign, display, or device is capable of being seen without visual aid by a person of normal visual acuity. A sign shall be considered visible even though the message or advertising content may be seen but not read.

**Source:** Laws 1975, LB 213, § 1; R.S.1943, (1988), § 39-618.02; Laws 1993, LB 370, § 20; Laws 1995, LB 264, § 2; Laws 2017, LB339, § 85.

Operative date July 1, 2017.

**39-203 Advertising sign; compensation upon removal; Department of Transportation; make expenditures; when.**

Just compensation shall be paid upon the removal of any advertising sign, display, or device lawfully erected or in existence prior to May 27, 1975, and not conforming to the provisions of sections 39-202 to 39-205, 39-215, 39-216, and 39-220 except as otherwise authorized by such sections. The Department of Transportation shall not be required to expend any funds under the provisions of such sections unless and until federal-aid matching funds are made available for this purpose.

**Source:** Laws 1975, LB 213, § 3; R.S.1943, (1988), § 39-618.04; Laws 1993, LB 370, § 21; Laws 1995, LB 264, § 3; Laws 2017, LB339, § 86.

Operative date July 1, 2017.

**39-204 Informational signs; erection; conform with rules and regulations; minimum service requirements.**

(1) Signs, displays, and devices giving specific information of interest to the traveling public shall be erected by or at the direction of the Department of Transportation and maintained within the right-of-way at appropriate distances from interchanges on the National System of Interstate and Defense Highways and from roads of the state primary system as shall conform with the rules and regulations adopted and promulgated by the department to carry out this section and section 39-205. Such rules and regulations shall be consistent with national standards promulgated from time to time by the appropriate authority of the federal government pursuant to 23 U.S.C. 131(f).

(2) For purposes of this section, specific information of interest to the traveling public shall mean only information about camping, lodging, food, attractions, and motor fuel and associated services, including trade names.

(3) The minimum service that is required to be available for each type of service shall include:

(a) Motor fuel services including:

(i) Vehicle services, which shall include fuel, oil, and water;

(ii) Restroom facilities and drinking water;

(iii) Continuous operation of such services for at least sixteen hours per day, seven days per week, for freeways and expressways and continuous operation of such services for at least twelve hours per day, seven days per week, for conventional roads; and

(iv) Telephone services;

(b) Attraction services including:

(i) An attraction of regional significance with the primary purpose of providing amusement, historical, cultural, or leisure activity to the public;

(ii) Restroom facilities and drinking water; and

(iii) Adequate parking accommodations;

(c) Food services including:

(i) Licensing or approval of such services, when required;

(ii) Continuous operation of such services to serve at least two meals per day, six days per week;

(iii) Modern sanitary facilities; and

(iv) Telephone services;

(d) Lodging services including:

(i) Licensing or approval of such services, when required;

(ii) Adequate sleeping accommodations; and

(iii) Telephone services; and

(e) Camping services including:

(i) Licensing or approval of such services, when required;

(ii) Adequate parking accommodations; and

(iii) Modern sanitary facilities and drinking water.

**Source:** Laws 1975, LB 213, § 9; Laws 1987, LB 741, § 1; R.S.1943, (1988), § 39-634.01; Laws 1993, LB 370, § 22; Laws 2010, LB926, § 1; Laws 2017, LB339, § 87.

Operative date July 1, 2017.

**39-205 Informational signs; business signs; posted by department; costs and fees; disposition; notice of available space.**

(1) Applicants for business signs shall furnish business signs to the Department of Transportation and shall pay to the department an annual fee for posting each business sign and the actual cost of material for, fabrication of, and erecting the specific information sign panels where specific information sign panels have not been installed.

(2) Upon receipt of the business signs and the annual fee, the department shall post or cause to be posted the business signs where specific information sign panels have been installed. The applicant shall not be required to remove any advertising device to qualify for a business sign except any advertising device which was unlawfully erected or in violation of section 39-202, 39-203, 39-204, 39-205, 39-206, 39-215, 39-216, or 39-220, any rule or regulation of the department, or any federal rule or regulation relating to informational signs. The specific information sign panels and business signs shall conform to the requirements of the Federal Beautification Act and the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(3) All revenue received for the posting or erecting of business signs or specific information sign panels pursuant to this section shall be deposited in the Highway Cash Fund, except that any revenue received from the annual fee and for posting or erecting such signs in excess of the state's costs shall be deposited in the General Fund.

(4) For purposes of this section, unless the context otherwise requires:

(a) Business sign means a sign displaying a commercial brand, symbol, trademark, or name, or combination thereof, designating a motorist service. Business signs shall be mounted on a rectangular information panel; and

(b) Specific information sign panel means a rectangular sign panel with:

(i) The word gas, food, attraction, lodging, or camping;

(ii) Directional information; and

(iii) One or more business signs.

(5) The department shall provide notice of space available for business signs on any specific information sign panel at least ninety days prior to accepting or approving the posting of any business sign.

**Source:** Laws 1975, LB 213, § 10; Laws 1987, LB 741, § 2; R.S.1943, (1988), § 39-634.02; Laws 1993, LB 370, § 23; Laws 1995, LB 264, § 4; Laws 2010, LB926, § 2; Laws 2017, LB339, § 88.  
Operative date July 1, 2017.

### **39-206 Informational signs; erection; conditions; fee.**

It is the intent of sections 39-204 and 39-205 to allow the erection of specific information sign panels on the right-of-way of the state highways under the following conditions:

(1) No state funds shall be used for the erection, maintenance, or servicing of such signs;

(2) Such signs shall be erected in accordance with federal standards and the rules and regulations adopted and promulgated by the Department of Transportation;

(3) Such signs may be erected by the department or by a contractor selected through the competitive bidding process; and

(4) The department shall charge an annual fee in an amount equal to the fair market rental value of the sign site and any other cost to the state associated with the erection, maintenance, or servicing of specific information sign panels.

If such sign is erected by a contractor, the annual fee shall be limited to the fair market rental value of the sign site.

**Source:** Laws 1987, LB 741, § 3; R.S.1943, (1988), § 39-634.03; Laws 1993, LB 370, § 24; Laws 2017, LB339, § 89.

Operative date July 1, 2017.

**39-207 Tourist-oriented directional sign panels; erection and maintenance.**

Tourist-oriented directional sign panels shall be erected and maintained by or at the direction of the Department of Transportation within the right-of-way of rural highways which are part of the state highway system to provide tourist-oriented information to the traveling public in accordance with sections 39-207 to 39-211.

For purposes of such sections:

(1) Rural highways means (a) all public highways and roads outside the limits of an incorporated municipality exclusive of freeways and interchanges on expressways and (b) all public highways and roads within incorporated municipalities having a population of forty thousand inhabitants or less as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census exclusive of freeways and interchanges on expressways. Expressway, freeway, and interchange are used in this subdivision as they are defined in section 39-1302; and

(2) Sign panel means one or more individual signs mounted as an assembly on the same supports.

**Source:** Laws 1993, LB 108, § 1; Laws 1995, LB 112, § 1; Laws 2017, LB113, § 39; Laws 2017, LB339, § 90.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB113, section 39, with LB339, section 90, to reflect all amendments.

**Note:** Changes made by LB339 became operative July 1, 2017. Changes made by LB113 became effective August 24, 2017.

**39-208 Sign panels; erection; conditions; fee; disposition.**

(1) The Department of Transportation shall erect tourist-oriented directional sign panels on the right-of-way of the rural highways pursuant to section 39-207 under the following conditions:

(a) No state funds shall be used for the erection, maintenance, or servicing of the sign panels;

(b) The sign panels shall be erected in accordance with federal standards and the rules and regulations adopted and promulgated by the department;

(c) The sign panels may be erected by the department or by a contractor selected by the department through the competitive negotiation process;

(d) No more than three sign panels shall be installed on the approach to an intersection; and

(e) The department shall charge an annual fee in an amount equal to the fair market rental value of the sign panel site and any other cost to the state associated with the erection, maintenance, or servicing of tourist-oriented directional sign panels. If the sign panel is erected by a contractor, the annual fee to the department shall be limited to the fair market rental value of the sign panel site.

(2) All revenue received for the posting or erecting of tourist-oriented directional sign panels pursuant to this section shall be deposited in the Highway

Cash Fund, except that any revenue received from the annual fee and for posting or erecting such sign panels in excess of the state's costs shall be deposited in the General Fund.

**Source:** Laws 1993, LB 108, § 2; Laws 2017, LB339, § 91.  
Operative date July 1, 2017.

**39-210 Sign panels; qualification of activities; minimum requirements; violation; effect.**

To qualify to appear on a tourist-oriented directional sign panel, an activity shall be licensed and approved by the state and local agencies if required by law and be open to the public at least eight hours per day, five days per week, including Saturdays or Sundays, during the normal season of the activity, except that if the activity is a winery, the winery shall be open at least twenty hours per week. The activity, before qualifying to appear on a sign panel, shall provide to the Department of Transportation assurance of its conformity with all applicable laws relating to discrimination based on race, creed, color, sex, national origin, ancestry, political affiliation, or religion. If the activity violates any of such laws, it shall lose its eligibility to appear on a tourist-oriented directional sign panel. In addition, the qualifying activity shall be required to remove any advertising device which was unlawfully erected or which is in violation of section 39-202, 39-203, 39-204, 39-205, 39-206, 39-215, 39-216, or 39-220, any rule or regulation of the department, or any federal rule or regulation relating to tourist-oriented directional sign panels. The tourist-oriented directional sign panels shall conform to the requirements of the Federal Beautification Act and the Manual on Uniform Traffic Control Devices as adopted pursuant to section 60-6,118.

**Source:** Laws 1993, LB 108, § 4; Laws 1995, LB 264, § 5; Laws 2010, LB926, § 3; Laws 2017, LB339, § 92.  
Operative date July 1, 2017.

**39-211 Sign panels; rules and regulations.**

The Department of Transportation shall adopt and promulgate rules and regulations deemed necessary by the department to carry out sections 39-207 to 39-211.

**Source:** Laws 1993, LB 108, § 5; Laws 2017, LB339, § 93.  
Operative date July 1, 2017.

**39-212 Acquisition of interest in property; control of advertising outside of right-of-way; compensation; removal; costs; payment by department.**

(1) The Department of Transportation may acquire the interest in real or personal property necessary to exercise the power authorized by subdivision (2)(m) of section 39-1320 and to pay just compensation upon removal of the following outdoor advertising signs, displays, and devices, as well as just compensation for the disconnection and removal of electrical service to the same:

(a) Those lawfully erected or in existence prior to March 27, 1972, and not conforming to the provisions of sections 39-212 to 39-222 except as otherwise authorized by such sections; and

(b) Those lawfully erected after March 27, 1972, which become nonconforming after being erected.

(2) Such compensation for removal of such signs, displays, and devices is authorized to be paid only for the following:

(a) The taking from the owner of such sign, display, or device or of all right, title, leasehold, and interest in connection with such sign, display, or device, or both; and

(b) The taking from the owner of the real property on which the sign, display, or device is located of the right to erect and maintain such signs, displays, and devices thereon.

(3) In all instances where signs, displays, or devices which are served electrically are taken under subdivision (2)(a) of this section, the department shall pay just compensation to the supplier of electricity for supportable costs of disconnection and removal of such service to the nearest distribution line or, in the event such sign, display, or device is relocated, just compensation for removal of such service to the point of relocation.

Except for expenditures for the removal of nonconforming signs erected between April 16, 1982, and May 27, 1983, the department shall not be required to expend any funds under sections 39-212 to 39-222 and 39-1320 unless and until federal-aid matching funds are made available for this purpose.

**Source:** Laws 1961, c. 195, § 2, p. 596; Laws 1972, LB 1181, § 4; Laws 1974, LB 490, § 1; Laws 1979, LB 322, § 12; Laws 1981, LB 545, § 7; Laws 1983, LB 120, § 3; Laws 1994, LB 848, § 1; R.S.Supp., 1994, § 39-1320.01; Laws 1995, LB 264, § 6; Laws 2017, LB339, § 94.

Operative date July 1, 2017.

**39-213 Control of advertising outside of right-of-way; agreements authorized; commercial and industrial zones; provisions.**

(1) In order that this state may qualify for the payments authorized in 23 U.S.C. 131(c) and (e), and to comply with the provisions of 23 U.S.C. 131 as revised and amended on October 22, 1965, by Public Law 89-285, the Nebraska Department of Transportation, for and in the name of the State of Nebraska, is authorized to enter into an agreement, or agreements, with the Secretary of Transportation of the United States, which agreement or agreements shall include provisions for regulation and control of the erection and maintenance of advertising signs, displays, and other advertising devices and may include, among other things, provisions for preservation of natural beauty, prevention of erosion, landscaping, reforestation, development of viewpoints for scenic attractions that are accessible to the public without charge, and the erection of markers, signs, or plaques, and development of areas in appreciation of sites of historical significance.

(2) It is the intention of the Legislature that the state shall be and is hereby empowered and directed to continue to qualify for and accept bonus payments pursuant to 23 U.S.C. 131(j) and subsequent amendments as amended in the Federal Aid Highway Acts of 1968 and 1970 for controlling outdoor advertising within the area adjacent to and within six hundred sixty feet of the edge of the right-of-way of the National System of Interstate and Defense Highways constructed upon any part of the right-of-way the entire width of which is acquired

subsequent to July 1, 1956, and, to this end, to continue any agreements with, and make any new agreements with the Secretary of Transportation, to accomplish the same. Such agreement or agreements shall also provide for excluding from application of the national standards segments of the National System of Interstate and Defense Highways which traverse commercial or industrial zones within the boundaries of incorporated municipalities as they existed on September 21, 1959, wherein the use of real property adjacent to the National System of Interstate and Defense Highways is subject to municipal regulation or control, or which traverse other areas where the land use, as of September 21, 1959, is clearly established by state law as industrial or commercial.

(3) It is also the intention of the Legislature that the state shall comply with 23 U.S.C. 131, as revised and amended on October 22, 1965, by Public Law 89-285, in order that the state not be penalized by the provisions of subsection (b) thereof, and that the Nebraska Department of Transportation shall be and is hereby empowered and directed to make rules and regulations in accord with the agreement between the Nebraska Department of Transportation and the United States Department of Transportation dated October 29, 1968.

**Source:** Laws 1961, c. 195, § 3, p. 596; Laws 1963, c. 236, § 1, p. 726; Laws 1972, LB 1058, § 11; Laws 1972, LB 1181, § 5; R.S.1943, (1993), § 39-1320.02; Laws 1995, LB 264, § 7; Laws 2017, LB339, § 95.

Operative date July 1, 2017.

**39-214 Control of advertising outside of right-of-way; adoption of rules and regulations by Department of Transportation; minimum requirements.**

Whenever advertising rights are acquired by the Department of Transportation pursuant to subdivision (2)(m) of section 39-1320 or an agreement has been entered into as authorized by section 39-213, it shall be the duty of the department to adopt and promulgate reasonable rules and regulations for the control of outdoor advertising within the area specified in such subdivision, which rules and regulations shall have as their minimum requirements the provisions of 23 U.S.C. 131 and regulations adopted pursuant thereto, as amended on March 27, 1972.

**Source:** Laws 1961, c. 195, § 4, p. 597; Laws 1972, LB 1181, § 6; R.S.1943, (1993), § 39-1320.03; Laws 1995, LB 264, § 8; Laws 2017, LB339, § 96.

Operative date July 1, 2017.

**39-216 Control of advertising visible from main-traveled way; unlawful; when permitted; written lease and permit from Department of Transportation.**

It shall be unlawful for any person to place or cause to be placed any advertising sign, display, or device which is visible from the main-traveled way of the Highway Beautification Control System or upon land not owned by such person, without first procuring a written lease from the owner of such land and a permit from the Department of Transportation authorizing such display or device to be erected as permitted by the advertising laws, rules, and regulations of this state.

**Source:** Laws 1972, LB 1181, § 8; Laws 1975, LB 213, § 7; R.S.1943, (1993), § 39-1320.07; Laws 1995, LB 264, § 10; Laws 2017, LB339, § 97.

Operative date July 1, 2017.



**39-217 Scenic byway designations.**

(1) The Department of Transportation may designate portions of the state highway system as a scenic byway when the highway corridor possesses unusual, exceptional, or distinctive scenic, historic, recreational, cultural, or archeological features. The department shall adopt and promulgate rules and regulations establishing the procedure and criteria to be utilized in making scenic byway designations.

(2) Any portion of a highway designated as a scenic byway which is located within the limits of any incorporated municipality shall not be designated as part of the scenic byway, except when such route possesses intrinsic scenic, historic, recreational, cultural, or archeological features which support designation of the route as a scenic byway.

**Source:** Laws 1995, LB 264, § 11; Laws 2017, LB339, § 98.  
Operative date July 1, 2017.

**39-218 Scenic byways; prohibition of signs visible from main-traveled way; exceptions.**

No sign shall be erected which is visible from the main-traveled way of any scenic byway except (1) directional and official signs to include, but not be limited to, signs and notices pertaining to natural wonders, scenic attractions, and historical attractions, (2) signs, displays, and devices advertising the sale or lease of property upon which such media are located, and (3) signs, displays, and devices advertising activities conducted on the property on which such media are located. Signs which are allowed shall comply with the standards and criteria established by rules and regulations of the Department of Transportation.

**Source:** Laws 1995, LB 264, § 12; Laws 2017, LB339, § 99.  
Operative date July 1, 2017.

**39-219 Control of advertising outside of right-of-way; erected prior to March 27, 1972; effect.**

Outdoor advertising signs, displays, and devices erected prior to March 27, 1972, may continue in zoned or unzoned commercial or industrial areas, notwithstanding the fact that such outdoor advertising signs, displays, and devices do not comply with standards and criteria established by sections 39-212 to 39-222 or rules and regulations of the Department of Transportation.

**Source:** Laws 1972, LB 1181, § 9; Laws 1994, LB 848, § 3; R.S.Supp., 1994, § 39-1320.08; Laws 1995, LB 264, § 13; Laws 2017, LB339, § 100.  
Operative date July 1, 2017.

**39-220 Control of advertising visible from main-traveled way; permit; fee; rules and regulations; exceptions.**

The Department of Transportation may at its discretion require permits for advertising signs, displays, or devices which are placed or allowed to exist along or upon any interstate or primary highway or at any point visible from the main-traveled way, except for signs located within an area of fifty feet of any commercial or industrial building on the premises. Such permits shall be renewed biennially. Each sign shall bear on the side facing the highway the

permit number in a readily observable place for inspection purposes from the highway right-of-way. The department is authorized to charge a fee to be not less than twenty-five cents or not to exceed fifteen dollars for each permit and renewal permit for each individual sign. The department shall promulgate rules and regulations establishing, and from time to time adjusting, the annual fees for the permits to cover the costs of administering sections 39-212 to 39-226 and may by rule and regulation provide exceptions from the payment of fees for signs advertising eleemosynary or nonprofit public service activities, signs designating historical sites, and farm and ranch directional signs. The department may revoke the permit for noncompliance reasons and remove the sign if, after thirty days' notification to the sign owner, the sign remains in noncompliance. Printed sale bills not exceeding two hundred sixteen square inches in size shall not require a permit if otherwise conforming.

**Source:** Laws 1972, LB 1181, § 10; Laws 1974, LB 490, § 2; Laws 1975, LB 213, § 8; R.S.1943, (1993), § 39-1320.09; Laws 1995, LB 264, § 14; Laws 2017, LB339, § 101.  
Operative date July 1, 2017.

**39-221 Control of advertising outside of right-of-way; compliance; damages; violations; penalty.**

Any person, firm, company, or corporation violating any of the provisions of sections 39-212 to 39-222 shall be guilty of a Class V misdemeanor. In addition to any other available remedies, the Director-State Engineer, for the Department of Transportation and in the name of the State of Nebraska, may apply to the district court having jurisdiction for an injunction to force compliance with any of the provisions of such sections or rules and regulations promulgated thereunder. When any person, firm, company, or corporation deems its property rights have been adversely affected by the application of the provisions of such sections, such person, firm, company, or corporation shall have the right to have damages ascertained and determined pursuant to Chapter 76, article 7.

**Source:** Laws 1972, LB 1181, § 11; Laws 1974, LB 490, § 3; Laws 1977, LB 40, § 211; Laws 1994, LB 848, § 4; R.S.Supp.,1993, § 39-1320.10; Laws 1995, LB 264, § 15; Laws 2017, LB339, § 102.  
Operative date July 1, 2017.

**39-222 Control of advertising outside of right-of-way; eminent domain; authorized.**

Sections 39-212 to 39-221 shall not be construed to prevent the Department of Transportation from (1) exercising the power of eminent domain to accomplish the removal of any sign or signs or (2) acquiring any interest in real or personal property necessary to exercise the powers authorized by such sections whether within or without zoned or unzoned commercial or industrial areas.

**Source:** Laws 1972, LB 1181, § 12; Laws 1994, LB 848, § 5; R.S.Supp.,1994, § 39-1320.11; Laws 1995, LB 264, § 16; Laws 2017, LB339, § 103.  
Operative date July 1, 2017.

**39-223 Governmental or quasi-governmental agency; removal of signs, displays, or devices along Highway Beautification Control System; exemption; petition.**

Any community, board of county commissioners, municipality, county, city, a specific region or area of the state, or other governmental or quasi-governmental agency which is part of a specific economic area located along the Highway Beautification Control System of the State of Nebraska may petition the Department of Transportation for an exemption from mandatory removal of any legal, nonconforming directional signs, displays, or devices as defined by 23 U.S.C. 131(o), which signs, displays, or devices were in existence on May 5, 1976. The petitioning agency shall supply such documents as are supportive of its petition for exemption.

The Department of Transportation is hereby authorized to seek the exemptions authorized by 23 U.S.C. 131(o) in accordance with the federal regulations promulgated thereunder, 23 C.F.R., part 750, subpart E, if the petitioning agency shall supply the necessary documents to justify such exemptions.

**Source:** Laws 1978, LB 534, § 1; R.S.1943, (1993), § 39-1320.12; Laws 1995, LB 264, § 17; Laws 2017, LB339, § 104.  
Operative date July 1, 2017.

**39-224 Department of Transportation; retention of signs, displays, or devices; request.**

Upon receipt of a petition under section 39-223, the Nebraska Department of Transportation shall make request of the United States Department of Transportation for permission to retain the directional signs, displays, or devices which provide information for the specific economic area responsible for the petition.

**Source:** Laws 1978, LB 534, § 2; R.S.1943, (1993), § 39-1320.13; Laws 1995, LB 264, § 18; Laws 2017, LB339, § 105.  
Operative date July 1, 2017.

**39-225 Department of Transportation; removal of nonconforming signs; program.**

The Department of Transportation shall adopt future programs to assure that removal of directional signs, displays, or devices, providing directional information about goods and services in the interest of the traveling public, not otherwise exempted by economic hardship, be deferred until all other nonconforming signs, on a statewide basis, are removed.

**Source:** Laws 1978, LB 534, § 3; R.S.1943, (1993), § 39-1320.14; Laws 1995, LB 264, § 19; Laws 2017, LB339, § 106.  
Operative date July 1, 2017.

### ARTICLE 3

#### MISCELLANEOUS PENALTY PROVISIONS

- Section  
39-308. Removal of traffic hazards; determined by Department of Transportation and local authority; violation; penalty.  
39-311. Rubbish on highways; prohibited; signs; enforcement; violation; penalties.  
39-312. Camping; permitted; where; violation; penalty.

**39-308 Removal of traffic hazards; determined by Department of Transportation and local authority; violation; penalty.**

It shall be the duty of the owner of real property to remove from such property any tree, plant, shrub, or other obstruction, or part thereof, which, by obstructing the view of any driver, constitutes a traffic hazard. When the Department of Transportation or any local authority determines upon the basis of engineering and traffic investigation that such a traffic hazard exists, it shall notify the owner and order that the hazard be removed within ten days. Failure of the owner to remove such traffic hazard within ten days shall constitute a Class V misdemeanor, and every day such owner fails to remove it shall be a separate offense.

**Source:** Laws 1973, LB 45, § 101; R.S.1943, (1988), § 39-6,101; Laws 1993, LB 370, § 32; Laws 2017, LB339, § 107.  
Operative date July 1, 2017.

**39-311 Rubbish on highways; prohibited; signs; enforcement; violation; penalties.**

(1) No person shall throw or deposit upon any highway:

(a) Any glass bottle, glass, nails, tacks, wire, cans, or other substance likely to injure any person or animal or damage any vehicle upon such highway; or

(b) Any burning material.

(2) Any person who deposits or permits to be deposited upon any highway any destructive or injurious material shall immediately remove such or cause it to be removed.

(3) Any person who removes a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance deposited on the highway from such vehicle.

(4) The Department of Transportation or a local authority as defined in section 60-628 may procure and place at reasonable intervals on the side of highways under its respective jurisdiction appropriate signs showing the penalty for violating this section. Such signs shall be of such size and design as to be easily read by persons on such highways, but the absence of such a sign shall not excuse a violation of this section.

(5) It shall be the duty of all Nebraska State Patrol officers, conservation officers, sheriffs, deputy sheriffs, and other law enforcement officers to enforce this section and to make prompt investigation of any violations of this section reported by any person.

(6) Any person who violates any provision of this section shall be guilty of (a) a Class III misdemeanor for the first offense, (b) a Class II misdemeanor for the second offense, and (c) a Class I misdemeanor for the third or subsequent offense.

**Source:** Laws 1973, LB 45, § 83; Laws 1988, LB 1030, § 40; R.S.1943, (1988), § 39-683; Laws 1993, LB 370, § 35; Laws 1994, LB 570, § 3; Laws 1997, LB 495, § 5; Laws 1998, LB 922, § 403; Laws 2017, LB339, § 108.  
Operative date July 1, 2017.

Cross References

Littering, penalty, see section 28-523.

**39-312 Camping; permitted; where; violation; penalty.**

It shall be unlawful to camp on any state or county public highway, roadside area, park, or other property acquired for highway or roadside park purposes except at such places as are designated campsites by the Department of Transportation or the county or other legal entity of government owning or controlling such places. This provision shall not apply to lands originally acquired for highway purposes which have been transferred or leased to the Game and Parks Commission or a natural resources district or to other lands owned or controlled by the Game and Parks Commission where camping shall be controlled by the provisions of section 37-305 or by a natural resources district where camping shall be controlled by the provisions of section 2-3292.

For purposes of this section, camping means temporary lodging out of doors and presupposes the occupancy of a shelter designed or used for such purposes, such as a sleeping bag, tent, trailer, station wagon, pickup camper, camper-bus, or other vehicle, and the use of camping equipment and camper means an occupant of any such shelter.

Any person who camps on any state or county public highway, roadside area, park, or other property acquired for highway or roadside park purposes, which has not been properly designated as a campsite, or any person who violates any lawfully promulgated rules or regulations properly posted to regulate camping at designated campsites shall be guilty of a Class V misdemeanor and shall be ordered to pay any amount as determined by the court which may be necessary to reimburse the department or the county for the expense of repairing any damage to such campsite resulting from such violation.

**Source:** Laws 1969, c. 306, § 1, p. 1097; Laws 1977, LB 41, § 37; Laws 1984, LB 861, § 18; R.S.1943, (1988), § 39-712.01; Laws 1993, LB 370, § 36; Laws 1998, LB 922, § 404; Laws 2017, LB339, § 109.  
Operative date July 1, 2017.

**ARTICLE 8  
BRIDGES**

(a) MISCELLANEOUS PROVISIONS

Section  
39-805. Bridge over irrigation or drainage ditch; construction and maintenance; cost; how paid.

(b) CONTRACTS FOR CONSTRUCTION AND REPAIR OF BRIDGES

39-810. Bridges; culverts; construction and repair; road improvements; contracts; letting; procedures.  
39-822. Bridge and culvert construction contracts; plans, specifications, and estimates furnished to bidders; statement of construction done.  
39-826.01. Proposed bridge or culvert; dam in lieu of; how determined.  
39-826.02. Proposed bridge or culvert; natural resources district; dam; feasibility study.

(g) STATE AID BRIDGES

39-847. State aid for bridges; application for replacement; costs; priorities; plans and specifications; contracts; maintenance.  
39-847.01. State Aid Bridge Fund; State Treasurer; transfer funds to.

Section

(k) INTERSTATE BRIDGE ACT OF 1959

- 39-891. Interstate bridges; declaration of purpose.
- 39-892. Interstate bridges; terms, defined.
- 39-893. Act; applicability.

(a) MISCELLANEOUS PROVISIONS

**39-805 Bridge over irrigation or drainage ditch; construction and maintenance; cost; how paid.**

Whenever any public highway within this state shall cross or be crossed by any ditch or channel of any public drainage or irrigation district, it shall be the duty of the governing board of the drainage or irrigation district and the governing board of the county or municipal corporation involved to negotiate and agree for the building and maintenance of bridges and approaches thereto on such terms as shall be equitable, all things considered, between such drainage or irrigation district and such county or municipality. If such boards for any reason shall fail to agree with reference to such matter, it shall be the duty of the drainage or irrigation district to build the necessary bridges and approaches, and restore the highway in question to its former state as nearly as may be as it was laid out prior to the construction of the ditch or channel in question, and it shall be the duty of the county or municipal corporation involved to maintain the bridges and approaches. Where more than seventy-five percent of the water passing through any such ditch or channel is used by any person, firm, or corporation for purposes other than irrigation or drainage, it shall be the duty of such person, firm, or corporation, so using such seventy-five percent or more of such water, to build and maintain solely at the expense of such person, firm, or corporation, all such bridges and approaches thereto. Any bridge that may be built by any drainage or irrigation district or by any person, firm, or corporation under the provisions of this section shall be constructed under the supervision of the Department of Transportation, if on a state highway, and under the supervision of the county board or governing body of a municipality, if under the jurisdiction of such board or governing body of such municipality.

**Source:** Laws 1913, c. 172, § 1, p. 524; R.S.1913, § 2983; C.S.1922, § 2734; Laws 1929, c. 172, § 1, p. 586; C.S.1929, § 39-821; R.S.1943, § 39-805; Laws 2017, LB339, § 110.  
Operative date July 1, 2017.

**Cross References**

**Irrigation ditches, bridges across, see sections 46-251 and 46-255.**

(b) CONTRACTS FOR CONSTRUCTION AND REPAIR OF BRIDGES

**39-810 Bridges; culverts; construction and repair; road improvements; contracts; letting; procedures.**

(1)(a) The county board of each county may erect and repair all bridges and approaches thereto and build all culverts and make improvements on roads, including the purchase of gravel for roads, and stockpile any materials to be used for such purposes, the cost and expense of which shall for no project exceed one hundred thousand dollars.

(b) All contracts for the erection or repair of bridges and approaches thereto or for the building of culverts and improvements on roads, the cost and expense

of which shall exceed one hundred thousand dollars, shall be let by the county board to the lowest responsible bidder.

(c) All contracts for materials for repairing, erecting, and constructing bridges and approaches thereto or culverts or for the purchase of gravel for roads, the cost and expense of which exceed twenty thousand dollars, shall be let to the lowest responsible bidder, but the board may reject any and all bids submitted for such materials.

(d) Upon rejection of any bid or bids by the board of such a county, such board shall have power and authority to purchase materials to repair, erect, or construct the bridges of such county, approaches thereto, or culverts or to purchase gravel for roads.

(e) All contracts for bridge erection or repair, approaches thereto, culverts, or road improvements in excess of twenty thousand dollars shall require individual cost-accounting records on each individual project. The total costs of each such separate project shall be included in the annual reports to the Board of Public Roads Classifications and Standards as required by section 39-2120.

(2)(a) Except as otherwise provided in subdivision (b) of this subsection, all bids for the letting of contracts shall be deposited with the county clerk of such a county, opened by him or her in the presence of the county board, and filed in such clerk's office.

(b) In a county with a population of more than one hundred fifty thousand inhabitants with a purchasing agent under section 23-3105, the bids shall be opened as directed pursuant to section 23-3111.

**Source:** Laws 1905, c. 126, § 1, p. 540; Laws 1911, c. 111, § 1, p. 391; R.S.1913, § 2956; C.S.1922, § 2714; C.S.1929, § 39-801; Laws 1931, c. 84, § 1, p. 222; C.S.Supp.,1941, § 39-801; R.S.1943, § 39-810; Laws 1955, c. 159, § 1, p. 462; Laws 1969, c. 328, § 1, p. 1173; Laws 1975, LB 115, § 1; Laws 1988, LB 429, § 1; Laws 2013, LB623, § 1; Laws 2017, LB86, § 1.  
Effective date August 24, 2017.

#### Cross References

Authority of board to purchase materials, other provisions, see sections 39-818, 39-824, and 39-826.

### **39-822 Bridge and culvert construction contracts; plans, specifications, and estimates furnished to bidders; statement of construction done.**

The county board shall keep in the office of the county clerk of the county a sufficient supply of the prints of the plans and the printed copies of the specifications and estimates of the cost of construction mentioned in section 39-821, to be furnished by the Director-State Engineer for distribution to prospective bidders and taxpayers of the county. No contract shall be entered into under the provisions of sections 39-810 to 39-826 for the construction or erection of any bridge or bridges unless, for the period of thirty days immediately preceding the time of entering into such contract, there shall have been available for distribution by the county clerk such plans and specifications. The county boards of the several counties shall prepare and transmit to the Department of Transportation a statement accompanied by the plans and specifications, showing the cost of all bridges built in their counties under the

provisions of such sections, and state therein whether they were built under a contract or by the county.

**Source:** Laws 1905, c. 126, § 15, p. 544; Laws 1913, c. 88, § 1, p. 232; R.S.1913, § 2969; Laws 1921, c. 286, § 2, p. 934; C.S.1922, § 2727; C.S.1929, § 39-814; R.S.1943, § 39-822; Laws 2017, LB339, § 111.

Operative date July 1, 2017.

**39-826.01 Proposed bridge or culvert; dam in lieu of; how determined.**

The Department of Transportation or the county board shall, prior to the design or construction of a new bridge or culvert in a new or existing highway or road within its jurisdiction, notify in writing, by first-class mail, the natural resources district in which such bridge or culvert will be located. The natural resources district shall, pursuant to section 39-826.02, determine whether it would be beneficial to the district to have a dam constructed in lieu of the proposed bridge or culvert. If the district shall determine that a dam would be more beneficial, the department or the county board and the natural resources district shall jointly determine the feasibility of constructing a dam to support the road in lieu of a bridge or culvert. If the department or the county board and the natural resources district cannot agree regarding the feasibility of a dam, the decision of the department, in the case of the state highway system, or the county board, in the case of the county road system, shall be controlling.

**Source:** Laws 1979, LB 213, § 1; Laws 2017, LB339, § 112.

Operative date July 1, 2017.

**39-826.02 Proposed bridge or culvert; natural resources district; dam; feasibility study.**

If a natural resources district shall receive notice of a proposed bridge or culvert pursuant to section 39-826.01, the district shall make a study to determine whether it would be practicable to construct a dam at or near the proposed site which could be used to support a highway or road. In making the study, such district shall consider the benefit which would be derived and the feasibility of such a dam. After it has made its determination, the natural resources district shall notify the Department of Transportation or the county board and shall, if the district favors such a dam, assist in the joint feasibility study and provide any other assistance which may be required.

**Source:** Laws 1979, LB 213, § 2; Laws 2017, LB339, § 113.

Operative date July 1, 2017.

(g) STATE AID BRIDGES

**39-847 State aid for bridges; application for replacement; costs; priorities; plans and specifications; contracts; maintenance.**

(1) Any county board may apply, in writing, to the Department of Transportation for state aid in the replacement of any bridge under the jurisdiction of such board. The application shall contain a description of the bridge, with a preliminary estimate of the cost of replacement thereof, and a certified copy of the resolution of such board, pledging such county to furnish fifty percent of the cost of replacement of such bridge. The county's share of replacement cost may



be from any source except the State Aid Bridge Fund, except that where there is any bridge which is the responsibility of two counties, either county may make application to the department and, if the application is approved by the department, such county and the department may replace such bridge and recover, by suit, one-half of the county's cost of such bridge from the county failing or refusing to join in such application. All requests for bridge replacement under sections 39-846 to 39-847.01 shall be forwarded by the department to the Board of Public Roads Classifications and Standards. Such board shall establish priorities for bridge replacement based on critical needs. The board shall, in June and December of each year, consider such applications and establish priorities for a period of time consistent with sections 39-2115 to 39-2119. The board shall return the applications to the department with the established priorities.

(2) The plans and specifications for each bridge shall be furnished by the department and replacement shall be under the supervision of the department and the county board.

(3) Any contract for the replacement of any such bridge shall be made by the department consistent with procedures for contracts for state highways and federal-aid secondary roads.

(4) After the replacement of any such bridge and the acceptance thereof by the department, any county having jurisdiction over it shall have sole responsibility for maintenance.

**Source:** Laws 1911, c. 112, § 2, p. 393; R.S.1913, § 2977; Laws 1919, c. 190, tit. VII, art. III, § 2, p. 815; Laws 1921, c. 260, § 1, p. 875; C.S.1922, § 8357; Laws 1923, c. 157, § 1, p. 382; Laws 1923, c. 156, § 1, p. 381; C.S.1929, § 39-1502; R.S.1943, § 39-847; Laws 1953, c. 287, § 61, p. 966; Laws 1973, LB 87, § 2; Laws 2017, LB339, § 114.

Operative date July 1, 2017.

**39-847.01 State Aid Bridge Fund; State Treasurer; transfer funds to.**

The State Treasurer shall transfer monthly thirty-two thousand dollars from the share of the Department of Transportation of the Highway Trust Fund and thirty-two thousand dollars from the counties' share of the Highway Trust Fund which is allocated to bridges to the State Aid Bridge Fund.

**Source:** Laws 1973, LB 87, § 3; Laws 1986, LB 599, § 4; Laws 2017, LB339, § 115.

Operative date July 1, 2017.

**Cross References**

**Highway Trust Fund**, see section 39-2215.

(k) INTERSTATE BRIDGE ACT OF 1959

**39-891 Interstate bridges; declaration of purpose.**

Recognizing that obstructions on or near the boundary of the State of Nebraska impede commerce and travel between the State of Nebraska and adjoining states, the Legislature hereby declares that bridges over these obstructions are essential to the general welfare of the State of Nebraska.

Providing bridges over these obstructions and for the safe and efficient operation of such bridges is deemed an urgent problem that is the proper concern of legislative action.

Such bridges, properly planned, designated, and managed, provide a safe passage for highway traffic to and from the state highway system and encourage commerce and travel between the State of Nebraska and adjoining states which increase the social and economic progress and general welfare of the state.

It is recognized that bridges between the State of Nebraska and adjoining states are not and cannot be the sole concern of the State of Nebraska. The nature of such bridges requires that a high degree of cooperation be exercised between the State of Nebraska and adjoining states in all phases of planning, construction, maintenance, and operation if proper benefits are to be realized.

It is also recognized that parties other than the State of Nebraska may wish to erect and control bridges between the State of Nebraska and adjoining states and that the construction, operation, and financing of such bridges have previously been authorized by the Legislature. Such bridges also benefit the State of Nebraska, and it is not the intent of the Legislature to abolish such power previously granted.

To this end, it is the intention of the Legislature to supplement sections 39-1301 to 39-1362 and 39-1393, relating to state highways, in order that the powers and authority of the department relating to the planning, construction, maintenance, acquisition, and operation of interstate bridges upon the state highway system may be clarified within a single act.

Acting under the direction of the Director-State Engineer, the department, with the advice of the State Highway Commission and the consent of the Governor, is given the power to enter into agreements with the United States and adjoining states, subject to the limitations imposed by the Constitution and the provisions of the Interstate Bridge Act of 1959.

The Legislature intends to place a high degree of trust in the hands of those officials whose duty it may be to enter into agreements with adjoining states and the United States for the planning, development, construction, acquisition, operation, maintenance, and protection of interstate bridges.

In order that the persons concerned may understand the limitations and responsibilities for planning, constructing, acquiring, operating, and maintaining interstate bridges upon the state highway system, it is necessary that the responsibilities for such work shall be fixed, but it is intended that the department, acting under the Director-State Engineer, shall have sufficient freedom to enter into agreements with adjoining states regarding any phase of planning, constructing, acquiring, maintaining, and operating interstate bridges upon the state highway system in order that the best interests of the State of Nebraska may always be served. The authority of the department to enter into agreements with adjoining states, as granted in the act, is therefor essential.

The Legislature hereby determines and declares that the provisions of the act are necessary for the preservation of the public peace, health, and safety, for the promotion of the general welfare, and as a contribution to the national defense.

**Source:** Laws 1959, c. 175, § 1, p. 630; Laws 1993, LB 15, § 1; Laws 2016, LB1038, § 5; Laws 2017, LB271, § 1.  
Effective date August 24, 2017.

**39-892 Interstate bridges; terms, defined.**

For purposes of the Interstate Bridge Act of 1959, unless the context otherwise requires:

(1) Approach shall mean that portion of any interstate bridge which allows the highway access to the bridge structure. It shall be measured along the centerline of the highway from the end of the bridge structure to the nearest right-of-way line of the closest street or road where traffic may leave the highway to avoid crossing the bridge, but in no event shall such approach exceed a distance of one mile. The term shall be construed to include all embankments, fills, grades, supports, drainage facilities, and appurtenances necessary therefor;

(2) Appurtenances shall include, but not be limited to, sidewalks, storm sewers, guardrails, handrails, steps, curb or grate inlets, fire plugs, retaining walls, lighting fixtures, and all other items of a similar nature which the department deems necessary for the proper operation of any interstate bridge or for the safety and convenience of the traveling public;

(3) Boundary line bridge shall mean any bridge upon which no toll, fee, or other consideration is charged for passage thereon and which connects the state highway systems of the State of Nebraska and an adjoining state in the same manner as an interstate bridge. Such bridges shall be composed of right-of-way, bridge structure, approaches, and road in the same manner as an interstate bridge but shall be distinguished from an interstate bridge in that no part of such bridge shall be a part of the state highway system, the title to such bridge being vested in a person other than the State of Nebraska, or the State of Nebraska and an adjoining state jointly. Any boundary line bridge purchased or acquired by the department, or the department and an adjoining state jointly, and added to the state highway system shall be deemed an interstate bridge;

(4) Boundary line toll bridge shall mean any boundary line bridge upon which a fee, toll, or other consideration is charged traffic for the use thereof. Any boundary line toll bridge purchased or acquired by the department, or by the department and an adjoining state jointly, and added to the state highway system shall be deemed an interstate bridge;

(5) Bridge structure shall mean the superstructure and substructure of any interstate bridge having a span of not less than twenty feet between undercopings of extreme end abutments, or extreme ends of openings of multiple boxes, when measured along the centerline of the highway thereon, and shall be construed to include the supports therefor and all appurtenances deemed necessary by the department;

(6) Construction shall mean the erection, fabrication, or alteration of the whole or any part of any interstate bridge. For purposes of this subdivision, alteration shall be construed to be the performance of construction by which the form or design of any interstate bridge is changed or modified;

(7) Department shall mean the Department of Transportation;

(8) Emergency shall include, but not be limited to, acts of God, invasion, enemy attack, war, flood, fire, storm, traffic accidents, or other actions of similar nature which usually occur suddenly and cause, or threaten to cause, damage requiring immediate attention;

(9) Expressway shall be defined in the manner provided by section 39-1302;

(10) Freeway shall be defined in the manner provided by section 39-1302;

(11) Highway shall mean a road, street, expressway, or freeway, including the entire area within the right-of-way, which has been designated a part of the state highway system;

(12) Interstate bridge shall mean the right-of-way, approaches, bridge structure, and highway necessary to form a passageway for highway traffic over the boundary line of the State of Nebraska from a point within the State of Nebraska to a point within an adjoining state for the purpose of spanning any obstruction or obstructions which would otherwise hinder the free and safe flow of traffic between such points, such bridge being a part of the state highway system with title vested in the State of Nebraska or in the State of Nebraska and an adjoining state jointly;

(13) Interstate bridge purposes shall include, but not be limited to, the applicable provisions of subdivisions (2)(a) through (l) of section 39-1320;

(14) Maintenance shall mean the act, operation, or continuous process of repair, reconstruction, or preservation of the whole or any part of any interstate bridge for the purpose of keeping it at or near its original standard of usefulness and shall include the performance of traffic services for the safety and convenience of the traveling public. For purposes of this subdivision, reconstruction shall be construed to be the repairing or replacing of any part of any interstate bridge without changing or modifying the form or design of such bridge;

(15) Person shall include bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations;

(16) Right-of-way shall mean land, property, or interest therein, usually in a strip, acquired for or devoted to an interstate bridge;

(17) State highway system shall mean the highways within the State of Nebraska as shown on the map provided for in section 39-1311 and as defined by section 39-1302;

(18) Street shall be defined in the manner provided by section 39-1302;

(19) Title shall mean the evidence of right to property or the right itself; and

(20) Traffic services shall mean the operation of an interstate bridge facility, and the services incidental thereto, to provide for the safe and convenient flow of traffic over such bridge. Such services shall include, but not be limited to, erection of snow fence, snow and ice removal, painting, repairing, and replacing signs, guardrails, traffic signals, lighting standards, pavement stripes and markings, adding conventional traffic control devices, furnishing power for road lighting and traffic control devices, and replacement of parts.

**Source:** Laws 1959, c. 175, § 2, p. 631; Laws 1993, LB 121, § 210; Laws 1993, LB 370, § 38; Laws 2017, LB339, § 116.

Operative date July 1, 2017.

### **39-893 Act; applicability.**

The provisions of the Interstate Bridge Act of 1959 are intended to be cumulative to, and not amendatory of, sections 39-1301 to 39-1362 and 39-1393.

**Source:** Laws 1959, c. 175, § 3, p. 635; Laws 1993, LB 15, § 2; Laws 2016, LB1038, § 6; Laws 2017, LB271, § 2.

Effective date August 24, 2017.

## ARTICLE 10

## RURAL MAIL ROUTES

## Section

39-1010. Mailboxes; location; violation; duty of Department of Transportation.

39-1011. Mailboxes; Department of Transportation; turnouts; provide.

**39-1010 Mailboxes; location; violation; duty of Department of Transportation.**

(1) Except as otherwise provided in this subsection, all mailboxes shall be placed such that no part of the mailbox extends beyond the shoulder line of any highway and the mailbox support shall be placed a minimum of one foot outside the shoulder line of any gravel-surfaced highway, and of any hard-surfaced highway having a shoulder width of six feet or more as measured from the edge of the hard surfacing. Along hard-surfaced highways having a shoulder width of less than six feet, the Department of Transportation shall, on new construction or reconstruction, where feasible, provide a shoulder width of not less than six feet, or provide for a minimum clear traffic lane of ten feet in width at mailbox turnouts. On highways built before October 9, 1961, having a shoulder width of less than six feet, the department may, where feasible and deemed advisable, provide a shoulder width of not less than six feet or provide for minimum clear traffic lane of ten feet in width at mailbox turnouts. For a hard-surfaced highway having either a mailbox turnout or a hard-surfaced shoulder width of eight feet or more, the mailbox shall be placed such that no part of the mailbox extends beyond the outside edge of the mailbox turnout or hard-surfaced portion of the shoulder and the mailbox support shall be placed a minimum of one foot outside the outside edge of the mailbox turnout or hard-surfaced portion of the shoulder.

(2) It shall be the duty of the department to notify the owner of all mailboxes in violation of the provisions of this section, and the department may remove such mailboxes if the owner fails or refuses to remove the same after a reasonable time after he or she is notified of such violations.

**Source:** Laws 1961, c. 194, § 1, p. 593; Laws 2014, LB757, § 1; Laws 2017, LB339, § 117.

Operative date July 1, 2017.

**39-1011 Mailboxes; Department of Transportation; turnouts; provide.**

The Department of Transportation shall provide and maintain gravel, crushed-rock, or hard-surface turnouts for delivery of mail to all mailboxes placed on the highway rights-of-way to conform with section 39-1010.

**Source:** Laws 1961, c. 194, § 2, p. 593; Laws 2017, LB339, § 118.

Operative date July 1, 2017.

## ARTICLE 11

## STATE HIGHWAY COMMISSION

## Section

39-1101. State Highway Commission; creation; members.

39-1110. State Highway Commission; powers and duties.

**39-1101 State Highway Commission; creation; members.**

There is hereby created in the Department of Transportation a State Highway Commission which shall consist of eight members to be appointed by the Governor with the consent of a majority of all the members of the Legislature. One member shall at all times be appointed from each of the eight districts designated in section 39-1102. Each member of the commission shall be (1) a citizen of the United States, (2) not less than thirty years of age, and (3) a bona fide resident of the State of Nebraska and of the district from which he or she is appointed for at least three years immediately preceding his or her appointment. Not more than four members shall be of the same political party. The Director-State Engineer shall be an ex officio member of the commission who shall vote in case of a tie.

**Source:** Laws 1953, c. 334, § 1, p. 1095; Laws 1955, c. 163, § 1, p. 468; Laws 1987, LB 161, § 1; Laws 2017, LB339, § 119.  
Operative date July 1, 2017.

**39-1110 State Highway Commission; powers and duties.**

(1) It shall be the duty of the State Highway Commission:

(a) To conduct studies and investigations and to act in an advisory capacity to the Director-State Engineer in the establishment of broad policies for carrying out the duties and responsibilities of the Department of Transportation;

(b) To advise the public regarding the policies, conditions, and activities of the department;

(c) To hold hearings, make investigations, studies, and inspections, and do all other things necessary to carry out the duties imposed upon it by law;

(d) To advance information and advice conducive to providing adequate and safe highways in the state;

(e) When called upon by the Governor, to advise him or her relative to the appointment of the Director-State Engineer; and

(f) To submit to the Governor its written advice regarding the feasibility of each relinquishment or abandonment of a fragment of a route, section of a route, or a route on the state highway system proposed by the department. The chairperson of the commission shall designate one or more of the members of the commission, prior to submitting such advice, to personally inspect the fragment of a route, section of a route, or a route to be relinquished or abandoned, who shall take into consideration the following factors: Cost to the state for maintenance, estimated cost to the state for future improvements, whether traffic service provided is primarily local or otherwise, whether other facilities provide comparable service, and the relationship to an integrated state highway system. The department shall furnish to the commission all needed assistance in making its inspection and study. If the commission, after making such inspection and study, shall fail to reach a decision as to whether or not the fragment of a route, section of a route, or a route should be relinquished or abandoned, it may hold a public hearing on such proposed relinquishment or abandonment. The commission shall give a written notice of the time and place of such hearing, not less than two weeks prior to the time of the hearing, to the political or governmental subdivisions or public corporations wherein such portion of the state highway system is proposed to be relinquished or abandoned. The commission shall submit to the Governor, within two weeks after

such hearing, its written advice upon such proposed relinquishment or abandonment.

(2) All funds rendered available by law to the department, including funds already collected for such purposes, may be used by the State Highway Commission in administering and effecting such purposes, to be paid upon approval by the Director-State Engineer.

(3) All data and information of the department shall be available to the State Highway Commission.

(4) The State Highway Commission may issue bonds under the Nebraska Highway Bond Act.

**Source:** Laws 1953, c. 334, § 10, p. 1098; Laws 1955, c. 163, § 3, p. 469; Laws 2000, LB 1135, § 4; Laws 2017, LB339, § 120.  
Operative date July 1, 2017.

**Cross References**

Nebraska Highway Bond Act, see section 39-2222.

**ARTICLE 13  
STATE HIGHWAYS**

(a) INTENT, DEFINITIONS, AND RULES

Section

- 39-1301. State highways; declaration of legislative intent.  
39-1302. Terms, defined.

(b) INTERGOVERNMENTAL RELATIONS

- 39-1306.01. Federal aid; political subdivisions; department; unused funds; allocation.  
39-1306.02. Federal aid; political subdivisions; allotment; department; duration; notice.  
39-1306.03. United States Department of Transportation; department assume responsibilities; agreements authorized; waiver of immunity; department; powers and duties.

(c) DESIGNATION OF SYSTEM

- 39-1309. State highway system; designation; redesignation; factors.  
39-1311. State highway system; department; maintain current map; contents; corridor location; map; notice; beltway; duties.

(e) LAND ACQUISITION

- 39-1320. State highway purposes; acquisition of property; eminent domain; purposes enumerated.  
39-1323.01. Lands acquired for highway purposes; lease, rental, or permit for use; authorization; proprietary purposes permitted; disposition of rental funds; conditions, covenants, exceptions, reservations.

(f) CONTROL OF ACCESS

- 39-1328.01. State highways; frontage roads; request by municipality, county, or property owners; right-of-way acquired by purchase or lease; department; maintenance.  
39-1328.02. State highways; frontage roads; request by municipality, county, or property owners; consent of federal government, when; right-of-way; reimbursement; maintenance.

(g) CONSTRUCTION AND MAINTENANCE

- 39-1345.01. State highways; public use while under construction, repair, or maintenance; contractor; liability.

§ 39-1301

HIGHWAYS AND BRIDGES

Section

(h) CONTRACTS

- 39-1350. Bids; contracts; department powers; department authorized to act for political subdivision.
- 39-1353. Construction contracts; proposal forms; issuance to certain bidders.

(j) MISCELLANEOUS

- 39-1359.01. Rights-of-way; mowing and harvesting of hay; permit; fee; department; powers and duties.
- 39-1363. Preservation of historical, archeological, and paleontological remains; agreements; funds; payment.
- 39-1364. Plans, specifications, and records of highway projects; available to public, when.
- 39-1365.01. State highway system; plans; department; duties; priorities.
- 39-1365.02. State highway system; federal funding; maximum use; department; report on system needs and planning procedures.

(l) STATE RECREATION ROADS

- 39-1390. State Recreation Road Fund; created; use; preferences; maintenance; investment.
- 39-1392. Exterior access roads; interior service roads; department; develop and file plans with Governor and Legislature; reviewed annually.

(a) INTENT, DEFINITIONS, AND RULES

**39-1301 State highways; declaration of legislative intent.**

Recognizing that safe and efficient highway transportation is a matter of important interest to all of the people in the state, the Legislature hereby determines and declares that an integrated system of highways is essential to the general welfare of the State of Nebraska.

Providing such a system of facilities and the efficient management, operation, and control thereof are recognized as urgent problems and the proper objectives of highway legislation.

Adequate highways provide for the free flow of traffic, result in low cost of motor vehicle operation, protect the health and safety of the citizens of the state, increase property values, and generally promote economic and social progress of the state.

It is the intent of the Legislature to consider of paramount importance the convenience and safety of the traveling public in the location, relocation, or abandonment of highways.

In designating the highway system of this state, as provided by sections 39-1301 to 39-1362 and 39-1393, the Legislature places a high degree of trust in the hands of those officials whose duty it shall be, within the limits of available funds, to plan, develop, construct, operate, maintain, and protect the highway facilities of this state, for present as well as for future uses.

The design, construction, maintenance, operation, and protection of adequate state highway facilities sufficient to meet the present demands as well as future requirements will, of necessity, require careful organization, with lines of authority definitely fixed, and basic rules of procedure established by the Legislature.

To this end, it is the intent of the Legislature, subject to the limitations of the Constitution and such mandates as the Legislature may impose by the provisions of such sections, to designate the Director-State Engineer and the department, acting under the direction of the Director-State Engineer, as direct



custodian of the state highway system, with full authority in all departmental administrative details, in all matters of engineering design, and in all matters having to do with the construction, maintenance, operation, and protection of the state highway system.

The Legislature intends to declare, in general terms, the powers and duties of the Director-State Engineer, leaving specific details to be determined by reasonable rules and regulations which may be promulgated by him or her. It is the intent of the Legislature to grant authority to the Director-State Engineer to exercise sufficient power and authority to enable him or her and the department to carry out the broad objectives stated in this section.

While it is necessary to fix responsibilities for the construction, maintenance, and operation of the several systems of highways, it is intended that the State of Nebraska shall have an integrated system of all roads and streets to provide safe and efficient highway transportation throughout the state. The authority granted in sections 39-1301 to 39-1362 and 39-1393 to the Director-State Engineer and to the political or governmental subdivisions or public corporations of this state to assist and cooperate with each other is therefor essential.

The Legislature hereby determines and declares that such sections are necessary for the preservation of the public peace, health, and safety, for promotion of the general welfare, and as a contribution to the national defense.

**Source:** Laws 1955, c. 148, § 1, p. 414; Laws 1993, LB 15, § 3; Laws 2016, LB1038, § 7; Laws 2017, LB271, § 3.  
Effective date August 24, 2017.

### **39-1302 Terms, defined.**

For purposes of sections 39-1301 to 39-1393, unless the context otherwise requires:

(1) Abandon shall mean to reject all or part of the department's rights and responsibilities relating to all or part of a fragment, section, or route on the state highway system;

(2) Alley shall mean an established passageway for vehicles and pedestrians affording a secondary means of access in the rear to properties abutting on a street or highway;

(3) Approach or exit road shall mean any highway or ramp designed and used solely for the purpose of providing ingress or egress to or from an interchange or rest area of a highway. An approach road shall begin at the point where it intersects with any highway not a part of the highway for which such approach road provides access and shall terminate at the point where it merges with an acceleration lane of a highway. An exit road shall begin at the point where it intersects with a deceleration lane of a highway and shall terminate at the point where it intersects any highway not a part of a highway from which the exit road provides egress;

(4) Arterial highway shall mean a highway primarily for through traffic, usually on a continuous route;

(5) Beltway shall mean the roads and streets not designated as a part of the state highway system and that are under the primary authority of a county or municipality, if the location of the beltway has been approved by (a) record of decision or finding of no significant impact and (b) the applicable local planning authority as a part of the comprehensive plan;

(6) Business shall mean any lawful activity conducted primarily for the purchase and resale, manufacture, processing, or marketing of products, commodities, or other personal property or for the sale of services to the public or by a nonprofit corporation;

(7) Channel shall mean a natural or artificial watercourse;

(8) Commercial activity shall mean those activities generally recognized as commercial by zoning authorities in this state, and industrial activity shall mean those activities generally recognized as industrial by zoning authorities in this state, except that none of the following shall be considered commercial or industrial:

(a) Outdoor advertising structures;

(b) General agricultural, forestry, ranching, grazing, farming, and related activities, including wayside fresh produce stands;

(c) Activities normally or regularly in operation less than three months of the year;

(d) Activities conducted in a building principally used as a residence;

(e) Railroad tracks and minor sidings; and

(f) Activities more than six hundred sixty feet from the nearest edge of the right-of-way of the road or highway;

(9) Connecting link shall mean the roads, streets, and highways designated as part of the state highway system and which are within the corporate limits of any city or village in this state;

(10) Controlled-access facility shall mean a highway or street especially designed for through traffic and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air, or view by reason of the fact that their property abuts upon such controlled-access facility or for any other reason. Such highways or streets may be freeways, or they may be parkways;

(11) Department shall mean the Department of Transportation;

(12) Displaced person shall mean any individual, family, business, or farm operation which moves from real property acquired for state highway purposes or for a federal-aid highway;

(13) Easement shall mean a right acquired by public authority to use or control property for a designated highway purpose;

(14) Expressway shall mean a divided arterial highway for through traffic with full or partial control of access which may have grade separations at intersections;

(15) Family shall mean two or more persons living together in the same dwelling unit who are related to each other by blood, marriage, adoption, or legal guardianship;

(16) Farm operation shall mean any activity conducted primarily for the production of one or more agricultural products or commodities for sale and home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support;

(17) Federal-aid primary roads shall mean roads, streets, and highways, whether a part of the state highway system, county road systems, or city streets, which have been designated as federal-aid primary roads by the Nebraska

Department of Transportation and approved by the United States Secretary of Transportation and shown on the maps provided for in section 39-1311;

(18) Freeway shall mean an expressway with full control of access;

(19) Frontage road shall mean a local street or road auxiliary to an arterial highway for service to abutting property and adjacent areas and for control of access;

(20) Full control of access shall mean that the right of owners or occupants of abutting land or other persons to access or view is fully controlled by public authority having jurisdiction and that such control is exercised to give preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings or intersections at grade or direct private driveway connections;

(21) Grade separation shall mean a crossing of two highways at different levels;

(22) Highway shall mean a road or street, including the entire area within the right-of-way, which has been designated a part of the state highway system;

(23) Individual shall mean a person who is not a member of a family;

(24) Interchange shall mean a grade-separated intersection with one or more turning roadways for travel between any of the highways radiating from and forming part of such intersection;

(25) Map shall mean a drawing or other illustration or a series of drawings or illustrations which may be considered together to complete a representation;

(26) Mileage shall mean the aggregate distance in miles without counting double mileage where there are one-way or divided roads, streets, or highways;

(27) Parking lane shall mean an auxiliary lane primarily for the parking of vehicles;

(28) Parkway shall mean an arterial highway for noncommercial traffic, with full or partial control of access, and usually located within a park or a ribbon of park-like development;

(29) Relinquish shall mean to surrender all or part of the rights and responsibilities relating to all or part of a fragment, section, or route on the state highway system to a political or governmental subdivision or public corporation of Nebraska;

(30) Right of access shall mean the rights of ingress and egress to or from a road, street, or highway and the rights of owners or occupants of land abutting a road, street, or highway or other persons to a way or means of approach, light, air, or view;

(31) Right-of-way shall mean land, property, or interest therein, usually in a strip, acquired for or devoted to a road, street, or highway;

(32) Road shall mean a public way for the purposes of vehicular travel, including the entire area within the right-of-way. A road designated as part of the state highway system may be called a highway, while a road in an urban area may be called a street;

(33) Roadside shall mean the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside;

(34) Roadway shall mean the portion of a highway, including shoulders, for vehicular use;

(35) Separation structure shall mean that part of any bridge or road which is directly overhead of the roadway of any part of a highway;

(36) State highway purposes shall have the meaning set forth in subsection (2) of section 39-1320;

(37) State highway system shall mean the roads, streets, and highways shown on the map provided for in section 39-1311 as forming a group of highway transportation lines for which the Nebraska Department of Transportation shall be the primary authority. The state highway system shall include, but not be limited to, rights-of-way, connecting links, drainage facilities, and the bridges, appurtenances, easements, and structures used in conjunction with such roads, streets, and highways;

(38) Street shall mean a public way for the purposes of vehicular travel in a city or village and shall include the entire area within the right-of-way;

(39) Structure shall mean anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location;

(40) Title shall mean the evidence of a person's right to property or the right itself;

(41) Traveled way shall mean the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes;

(42) Unzoned commercial or industrial area for purposes of control of outdoor advertising shall mean all areas within six hundred sixty feet of the nearest edge of the right-of-way of the interstate and federal-aid primary systems which are not zoned by state or local law, regulation, or ordinance and on which there is located one or more permanent structures devoted to a business or industrial activity or on which a commercial or industrial activity is conducted, whether or not a permanent structure is located thereon, the area between such activity and the highway, and the area along the highway extending outward six hundred feet from and beyond each edge of such activity and, in the case of the primary system, may include the unzoned lands on both sides of such road or highway to the extent of the same dimensions if those lands on the opposite side of the highway are not deemed scenic or having aesthetic value as determined by the department. In determining such an area, measurements shall be made from the furthest or outermost edges of the regularly used area of the commercial or industrial activity, structures, normal points of ingress and egress, parking lots, and storage and processing areas constituting an integral part of such commercial or industrial activity;

(43) Visible, for purposes of section 39-1320, in reference to advertising signs, displays, or devices, shall mean the message or advertising content of such sign, display, or device is capable of being seen without visual aid by a person of normal visual acuity. A sign shall be considered visible even though the message or advertising content may be seen but not read;

(44) Written instrument shall mean a deed or any other document that states a contract, agreement, gift, or transfer of property; and

(45) Zoned commercial or industrial areas shall mean those areas within six hundred sixty feet of the nearest edge of the right-of-way of the Highway

Beautification Control System defined in section 39-201.01, zoned by state or local zoning authorities for industrial or commercial activities.

**Source:** Laws 1955, c. 148, § 2, p. 415; Laws 1969, c. 329, § 1, p. 1174; Laws 1972, LB 1181, § 1; Laws 1975, LB 213, § 4; Laws 1983, LB 120, § 2; Laws 1993, LB 15, § 4; Laws 1993, LB 121, § 211; Laws 1993, LB 370, § 39; Laws 1995, LB 264, § 21; Laws 2005, LB 639, § 1; Laws 2016, LB1038, § 8; Laws 2017, LB271, § 4; Laws 2017, LB339, § 121.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB271, section 4, with LB339, section 121, to reflect all amendments.

**Note:** Changes made by LB339 became operative July 1, 2017. Changes made by LB271 became effective August 24, 2017.

### (b) INTERGOVERNMENTAL RELATIONS

#### **39-1306.01 Federal aid; political subdivisions; department; unused funds; allocation.**

Unused funds shall be made available by the department to other political or governmental subdivisions or public corporations for an additional period of six months. The department shall likewise make available unused funds from allotments which have been made prior to December 25, 1969. The department shall separately classify all unused funds referred to in section 39-1306 from their sources on the basis of the type of political or governmental subdivision or public corporation to which they were allotted. It is the intent of the Legislature that such funds which were allotted to counties and were unused be made available to other counties, and that such funds which were allotted to cities and villages and were unused be made available to other cities and villages. The funds in each classification shall be made available by the department to other subdivisions which have utilized all of the federal funds available to them, and shall be subject to the same conditions as apply to funds received under section 39-1306. Such funds shall be reallocated upon application therefor by the subdivisions.

**Source:** Laws 1967, c. 237, § 2, p. 635; Laws 1969, c. 330, § 3, p. 1185; Laws 2017, LB339, § 122.  
Operative date July 1, 2017.

#### **39-1306.02 Federal aid; political subdivisions; allotment; department; duration; notice.**

When any political or governmental subdivision or any public corporation of this state has an allotment of federal-aid funds made available to it by the federal government, the department shall give notice to the political or governmental subdivision of the amount of such funds the department has allotted to it, and, that the duration of the allotment to the political or governmental subdivision or public corporation is for not less than an eighteen-month period, which notice shall state the last date of such allotment to the subdivision or political corporation. The department shall give notice a second time six months before the last date of such allotment of the impending six months expiration of the allotment and of the amount of funds remaining.

**Source:** Laws 1969, c. 330, § 2, p. 1185; Laws 2017, LB339, § 123.  
Operative date July 1, 2017.

**39-1306.03 United States Department of Transportation; department assume responsibilities; agreements authorized; waiver of immunity; department; powers and duties.**

(1) The department may assume, pursuant to 23 U.S.C. 326, all or part of the responsibilities of the United States Department of Transportation:

(a) For determining whether federal-aid design and construction projects are categorically excluded from requirements for environmental assessments or environmental impact statements; and

(b) For environmental review, consultation, or other related actions required under any federal law applicable to activities that are classified as categorical exclusions.

(2) The department may assume, pursuant to 23 U.S.C. 327, all or part of the responsibilities of the United States Department of Transportation:

(a)(i) With respect to one or more highway projects within the state, under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq.; and

(ii) For environmental review, consultation, or other action required under any federal environmental law pertaining to the review or approval of a specific project; and

(b) With respect to one or more railroad, public transportation, or multimodal projects within the state under the National Environmental Policy Act of 1969, as amended.

(3) The department may enter into one or more agreements with the United States Secretary of Transportation, including memoranda of understanding, in furtherance of the assumption by the department of duties under 23 U.S.C. 326 and 327.

(4) The State of Nebraska hereby waives its immunity from civil liability, including immunity from suit in federal court under the Eleventh Amendment to the United States Constitution, and consents to the jurisdiction of the federal courts solely for the compliance, discharge, or enforcement of responsibilities assumed by the department pursuant to 23 U.S.C. 326 and 327, in accordance with the same procedural and substantive requirements applicable to a suit against a federal agency. This waiver of immunity shall only be valid if:

(a) The department executes a memorandum of understanding with the United States Department of Transportation accepting the jurisdiction of the federal courts as required by 23 U.S.C. 326(c) and 327(c);

(b) The act or omission that is the subject of the lawsuit arises out of compliance, discharge, or enforcement of responsibilities assumed by the department pursuant to 23 U.S.C. 326 and 327; and

(c) The memorandum of understanding is in effect when the act or omission that is the subject of the federal lawsuit occurred.

(5) The department may adopt and promulgate rules and regulations to implement this section and may adopt relevant federal environmental standards as the standards for the department.

**Source:** Laws 2017, LB271, § 5.

Effective date August 24, 2017.

## (c) DESIGNATION OF SYSTEM

**39-1309 State highway system; designation; redesignation; factors.**

(1) The map prepared by the State Highway Commission showing a proposed state highway system in Nebraska, filed with the Clerk of the Legislature and referred to in the resolution filed with the Legislature on February 3, 1955, is hereby adopted by the Legislature as the state highway system on September 18, 1955, except that a highway from Rushville in Sheridan County going south on the most feasible and direct route to the Smith Lake State Recreation Grounds shall be known as state highway 250 and shall be a part of the state highway system.

(2) The state highway system may be redesignated, relocated, redetermined, or recreated by the department with the written advice of the State Highway Commission and the consent of the Governor. In redesignating, relocating, redetermining, or recreating the several routes of the state highway system, the following factors, except as provided in section 39-1309.01, shall be considered: (a) The actual or potential traffic volumes and other traffic survey data, (b) the relevant factors of construction, maintenance, right-of-way, and the costs thereof, (c) the safety and convenience of highway users, (d) the relative importance of each highway to existing business, industry, agriculture, enterprise, and recreation and to the development of natural resources, business, industry, agriculture, enterprise, and recreation, (e) the desirability of providing an integrated system to serve interstate travel, principal market centers, principal municipalities, county seat municipalities, and travel to places of statewide interest, (f) the desirability of connecting the state highway system with any state park, any state forest reserve, any state game reserve, the grounds of any state institution, or any recreational, scenic, or historic place owned or operated by the state or federal government, (g) the national defense, and (h) the general welfare of the people of the state.

(3) Any highways not designated as a part of the state highway system as provided by sections 39-1301 to 39-1362 and 39-1393 shall be a part of the county road system, and the title to the right-of-way of such roads shall vest in the counties in which the roads are located.

**Source:** Laws 1955, c. 148, § 9, p. 420; Laws 1959, c. 176, § 1, p. 647; Laws 1981, LB 285, § 5; Laws 1993, LB 15, § 6; Laws 2016, LB1038, § 9; Laws 2017, LB271, § 6.  
Effective date August 24, 2017.

**39-1311 State highway system; department; maintain current map; contents; corridor location; map; notice; beltway; duties.**

(1) The department at all times shall maintain a current map of the state, which shall show all the roads, highways, and connecting links which have been designated, located, created, or constituted as part of the state highway system, including all corridors. All changes in designation or location of highways constituting the state highway system, or additions thereto, shall be indicated upon the map. The department shall also maintain six separate and additional maps. These maps shall include (a) the roads, highways, and streets designated as federal-aid primary roads as of March 27, 1972, (b) the National System of Interstate and Defense Highways, (c) the roads designated as the federal-aid primary system as it existed on June 1, 1991, (d) the National Highway System, (e) the Highway Beautification Control System as defined in

section 39-201.01, and (f) scenic byways as defined in section 39-201.01. The National Highway System is the system designated as such under the federal Intermodal Surface Transportation Efficiency Act. The maps shall be available at all times for public inspection at the offices of the Director-State Engineer and shall be filed with the Legislature of the State of Nebraska each biennium.

(2) Whenever the department has received a corridor location approval for a proposed state highway or proposed beltway to be located in any county or municipality, it shall prepare a map of such corridor sufficient to show the location of such corridor on each parcel of land to be traversed. If the county or municipality in which such corridor is located does not have a requirement for the review and approval of a preliminary subdivision plat or a requirement that a building permit be obtained prior to commencement of a structure, the department shall send notice of the approval of such corridor by certified mail to the owner of each parcel traversed by the corridor at the address shown for such owner on the county tax records. Such notice shall advise the owner of the requirement of sections 39-1311 to 39-1311.05 for preliminary subdivision plats and for building permits.

(3) For any beltway proposed under sections 39-1311 to 39-1311.05, the duties of the department shall be assumed by the county or municipality that received approval for the beltway project.

**Source:** Laws 1955, c. 148, § 11, p. 422; Laws 1972, LB 1181, § 2; Laws 1974, LB 805, § 1; Laws 1995, LB 264, § 22; Laws 2003, LB 187, § 7; Laws 2005, LB 639, § 2; Laws 2017, LB339, § 124.  
Operative date July 1, 2017.

(e) LAND ACQUISITION

**39-1320 State highway purposes; acquisition of property; eminent domain; purposes enumerated.**

(1) The department is hereby authorized to acquire, either temporarily or permanently, lands, real or personal property or any interests therein, or any easements deemed to be necessary or desirable for present or future state highway purposes by gift, agreement, purchase, exchange, condemnation, or otherwise. Such lands or real property may be acquired in fee simple or in any lesser estate. It is the intention of the Legislature that all property leased or purchased from the owner shall receive a fair price.

(2) State highway purposes, as referred to in subsection (1) of this section or otherwise in sections 39-1301 to 39-1362 and 39-1393, shall include provision for, but shall not be limited to, the following:

(a) The construction, reconstruction, relocation, improvement, and maintenance of the state highway system. The right-of-way for such highways shall be of such width as is deemed necessary by the department;

(b) Adequate drainage in connection with any highway, cuts, fills, or channel changes and the maintenance thereof;

(c) Controlled-access facilities, including air, light, view, and frontage and service roads to highways;

(d) Weighing stations, shops, storage buildings and yards, and road maintenance or construction sites;



(e) Road material sites, sites for the manufacture of road materials, and access roads to such sites;

(f) The preservation of objects of attraction or scenic value adjacent to, along, or in close proximity to highways and the culture of trees and flora which may increase the scenic beauty of such highways;

(g) Roadside areas or parks adjacent to or near any highway;

(h) The exchange of property for other property to be used for rights-of-way or other purposes set forth in subsection (1) or (2) of this section if the interests of the state will be served and acquisition costs thereby reduced;

(i) The maintenance of an unobstructed view of any portion of a highway so as to promote the safety of the traveling public;

(j) The construction and maintenance of stock trails and cattle passes;

(k) The erection and maintenance of marking and warning signs and traffic signals;

(l) The construction and maintenance of sidewalks and highway illumination;

(m) The control of outdoor advertising which is visible from the nearest edge of the right-of-way of the Highway Beautification Control System as defined in section 39-201.01 to comply with the provisions of 23 U.S.C. 131, as amended;

(n) The relocation of or giving assistance in the relocation of individuals, families, businesses, or farm operations occupying premises acquired for state highway or federal-aid road purposes; and

(o) The establishment and maintenance of wetlands to replace or to mitigate damage to wetlands affected by highway construction, reconstruction, or maintenance. The replacement lands shall be capable of being used to create wetlands comparable to the wetlands area affected. The area of the replacement lands may exceed the wetlands area affected. Lands may be acquired to establish a large or composite wetlands area, sometimes called a wetlands bank, not larger than an area which is one hundred fifty percent of the lands reasonably expected to be necessary for the mitigation of future impact on wetlands brought about by highway construction, reconstruction, or maintenance during the six-year plan as required by sections 39-2115 to 39-2117, an annual plan under section 39-2119, or an annual metropolitan transportation improvement program under section 39-2119.01 in effect upon acquisition of the lands. For purposes of this section, wetlands shall have the definition found in 33 C.F.R. 328.3(c).

(3) The procedure to condemn property authorized by subsection (1) of this section or elsewhere in sections 39-1301 to 39-1362 and 39-1393 shall be exercised in the manner set forth in sections 76-704 to 76-724 or as provided by section 39-1323, as the case may be.

**Source:** Laws 1955, c. 148, § 20, p. 425; Laws 1961, c. 195, § 1, p. 594; Laws 1969, c. 329, § 2, p. 1178; Laws 1972, LB 1181, § 3; Laws 1975, LB 213, § 5; Laws 1992, LB 899, § 1; Laws 1992, LB 1241, § 3; Laws 1993, LB 15, § 7; Laws 1995, LB 264, § 23; Laws 2007, LB277, § 1; Laws 2016, LB1038, § 10; Laws 2017, LB271, § 7; Laws 2017, LB339, § 125.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB271, section 7, with LB339, section 125, to reflect all amendments.

**Note:** Changes made by LB339 became operative July 1, 2017. Changes made by LB271 became effective August 24, 2017.

## Cross References

Advertising and informational signs along highways and roads, see sections 39-201.01 to 39-226.

Outdoor advertising signs, displays, and devices, rules and regulations of the Department of Transportation, see section 39-102.

Outdoor advertising signs, removal, see sections 69-1701 and 69-1702.

**39-1323.01 Lands acquired for highway purposes; lease, rental, or permit for use; authorization; proprietary purposes permitted; disposition of rental funds; conditions, covenants, exceptions, reservations.**

The Nebraska Department of Transportation, subject to the approval of the Governor, and the United States Department of Transportation if such department has a financial interest, is authorized to lease, rent, or permit for use, any area, or land and the buildings thereon, which area or land was acquired for highway purposes. The Director-State Engineer, for the Nebraska Department of Transportation, and in the name of the State of Nebraska, may execute all leases, permits, and other instruments necessary to accomplish the foregoing. Such instruments may contain any conditions, covenants, exceptions, and reservations which the department deems to be in the public interest, including, but not limited to, the provision that upon notice that such property is needed for highway purposes the use and occupancy thereof shall cease. If so leased, rented, or permitted to be used by a municipality, the property may be used for such governmental or proprietary purpose as the governing body of the municipality shall determine, and such governing body may let the property to bid by private operators for proprietary uses. All money received as rent shall be deposited in the state treasury and by the State Treasurer placed in the Highway Cash Fund, subject to reimbursement, if requested, to the United States Department of Transportation for its proportionate financial contribution.

**Source:** Laws 1961, c. 354, § 1, p. 1114; Laws 1965, c. 222, § 1, p. 644; Laws 1969, c. 331, § 1, p. 1186; Laws 1969, c. 584, § 41, p. 2368; Laws 1986, LB 599, § 5; Laws 2017, LB339, § 126.  
Operative date July 1, 2017.

## (f) CONTROL OF ACCESS

**39-1328.01 State highways; frontage roads; request by municipality, county, or property owners; right-of-way acquired by purchase or lease; department; maintenance.**

Whenever a highway not a freeway, which formerly traversed the corporate limits of a municipality of not more than five thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, is relocated and is made a controlled-access facility, and the department is or is not providing any frontage road as authorized by section 39-1328, near an intersection with a roadway connecting with such municipality, the department shall, when consistent with requirements of traffic safety, and when the cost of drainage structures does not exceed five thousand dollars, and upon the conditions hereinafter set out construct such frontage roads if requested to do so by such municipality, by the county, or by the owners of sixty percent of the property abutting on such relocated highway if such request is made prior to the purchase, lease, or lease with option to purchase of right-of-way by the department. The quadrant of such intersection in which the frontage road or roads shall be located shall be designated by the governing board of such

municipality. The department shall at the request of the county or municipality procure the right-of-way for such frontage road by lease or lease-option to buy or in the same manner as though it were for state highway purposes after receiving from the county or municipality reasonable assurance of reimbursement for such right-of-way costs. The responsibility for the maintenance of such frontage road shall be as provided in section 39-1372.

**Source:** Laws 1965, c. 211, § 1, p. 619; Laws 2017, LB113, § 40; Laws 2017, LB339, § 127.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB339, section 127, with LB113, section 40, to reflect all amendments.

**Note:** Changes made by LB339 became operative July 1, 2017. Changes made by LB113 became effective August 24, 2017.

**39-1328.02 State highways; frontage roads; request by municipality, county, or property owners; consent of federal government, when; right-of-way; reimbursement; maintenance.**

Whenever a highway not a freeway, which formerly traversed the corporate limits of a municipality, has been relocated since January 1, 1960, and has been made or will be made a controlled-access facility, and the department has not provided any frontage road as authorized by section 39-1328, near an intersection with a roadway connecting with such municipality, the department shall, when consistent with requirements of traffic safety, and when the cost of drainage structures does not exceed five thousand dollars, and upon the conditions hereinafter set out construct such frontage roads if requested to do so by such municipality, the county, or by the owners of sixty percent of the property abutting on such relocated highway within two years after November 18, 1965, or within two years after the highway is made a controlled-access facility. If agreements exist with the federal government requiring its consent to the relinquishment of control of access, the department shall make a bona fide effort to secure such consent, but upon failure to obtain such consent, the frontage road shall not be constructed, or, if conditions are imposed by the federal government, the department shall construct such frontage roads only in accordance with such conditions. The municipality, county, or owners requesting such frontage road shall reimburse the department for any damages which it paid for such control of access and also for payment to the federal government of such sum, if any, demanded by it for the relinquishment of the access control. The quadrant of such intersection in which the frontage road may be located shall be designated by the governing board of such municipality. The department shall at the request of the county or municipality procure the right-of-way for such frontage road in the same manner as though it were for state highway purposes after receiving from the county or municipality reasonable assurance of reimbursement for such right-of-way costs. The responsibility for the maintenance of such frontage road shall be as provided in section 39-1372.

**Source:** Laws 1965, c. 211, § 2, p. 620; Laws 2017, LB339, § 128.  
Operative date July 1, 2017.

(g) CONSTRUCTION AND MAINTENANCE

**39-1345.01 State highways; public use while under construction, repair, or maintenance; contractor; liability.**

Whenever the department, under the authority of section 39-1345, permits the public use of a highway undergoing construction, repair, or maintenance in

lieu of a detour route, the contractor shall not be held responsible for damages to those portions of the project upon which the department has permitted public use, when such damages are the result of no proximate act or failure to act on the part of the contractor.

**Source:** Laws 1969, c. 310, § 1, p. 1114; Laws 2001, LB 489, § 11; Laws 2017, LB339, § 129.  
Operative date July 1, 2017.

(h) CONTRACTS

**39-1350 Bids; contracts; department powers; department authorized to act for political subdivision.**

The department shall have the authority to act for any political or governmental subdivision or public corporation of this state for the purpose of taking bids or letting contracts for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances. The department, while so acting, may take such bids and let such contracts at the offices of the department in Lincoln, Nebraska, or at such other location as designated by the department if the department has the written consent of the political or governmental subdivision or public corporation where the work is to be done.

**Source:** Laws 1955, c. 148, § 50, p. 439; Laws 1969, c. 333, § 1, p. 1189; Laws 2015, LB312, § 3; Laws 2017, LB339, § 130.  
Operative date July 1, 2017.

**39-1353 Construction contracts; proposal forms; issuance to certain bidders.**

(1) Proposal forms for submitting bids on any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances to be let by the department shall be issued by the department at the offices of the department in Lincoln, Nebraska, or at such other location as designated by the department not later than 5 p.m. of the day before the letting of the contract.

(2) Such proposal forms shall be issued only to those persons previously qualified by the department and bids shall be accepted only from such qualified persons. This subsection shall not apply to any contract granted an exemption from prequalification requirements pursuant to subsection (2) of section 39-1351.

**Source:** Laws 1955, c. 148, § 53, p. 440; Laws 1969, c. 333, § 2, p. 1189; Laws 1995, LB 447, § 1; Laws 2015, LB312, § 6; Laws 2017, LB339, § 131.  
Operative date July 1, 2017.

(j) MISCELLANEOUS

**39-1359.01 Rights-of-way; mowing and harvesting of hay; permit; fee; department; powers and duties.**

For purposes of this section, the definitions in section 39-1302 apply.

The department shall issue permits which authorize and regulate the mowing and harvesting of hay on the right-of-way of highways of the state highway system. The applicant for a permit shall be informed in writing and shall sign a

release acknowledging (1) that he or she will assume all risk and liability for hay quality and for any accidents and damages that may occur as a result of the work and (2) that the State of Nebraska assumes no liability for the hay quality or for work done by the permittee. The applicant shall show proof of liability insurance of at least one million dollars. The owner or the owner's assignee of land abutting the right-of-way shall have priority to receive a permit for such land under this section until July 30 of each year. Applicants who are not owners of abutting land shall be limited to a permit for five miles of right-of-way per year. The department shall allow mowing and hay harvesting on or after July 15 of each year. The department shall charge a permit fee in an amount calculated to defray the costs of administering this section. All fees received under this section shall be remitted to the State Treasurer for credit to the Highway Cash Fund. The department shall adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2007, LB43, § 1; Laws 2014, LB698, § 1; Laws 2017, LB339, § 132.

Operative date July 1, 2017.

**39-1363 Preservation of historical, archeological, and paleontological remains; agreements; funds; payment.**

To more effectually preserve the historical, archeological, and paleontological remains of the state, the department is authorized to enter into agreements with the appropriate agencies of the state charged with preserving historical, archeological, and paleontological remains to have these agencies remove and preserve such remains disturbed or to be disturbed by highway construction and to use highway funds, when appropriated, for this purpose. This authority specifically extends to highways which are part of the National System of Interstate and Defense Highways as defined in the Federal Aid Highway Act of 1956, Public Law 627, 84th Congress, and the use of state funds on a matching basis with federal funds therein.

**Source:** Laws 1959, c. 178, § 1, p. 649; Laws 2017, LB339, § 133.

Operative date July 1, 2017.

**39-1364 Plans, specifications, and records of highway projects; available to public, when.**

The department shall, upon the request of any citizen of this state, disclose to such citizen full information concerning any highway construction, alteration, maintenance, or repair project in this state, whether completed, presently in process, or contemplated for future action, and permit an examination of the plans, specifications, and records concerning such project, except that any information received by the department as confidential by the laws of this state shall not be disclosed. Any person who willfully fails to comply with the provisions of this section shall be guilty of official misconduct. By the provisions of this section, the officials of the department will not be required to furnish information on the right-of-way of any proposed highway until such information can be made available to the general public.

**Source:** Laws 1959, c. 179, § 1, p. 650; Laws 2017, LB339, § 134.

Operative date July 1, 2017.

**39-1365.01 State highway system; plans; department; duties; priorities.**

The department shall be responsible for developing a specific and long-range state highway system plan. The department shall annually formulate plans to meet the state highway system needs of all facets of the state and shall assign priorities for such needs. The department shall, on or before December 1 of each year, present such plans to the Legislature. The plans shall be referred to the appropriate standing committees of the Legislature for review. The department shall consider the preservation of the existing state highway system asset as its primary priority except as may otherwise be provided in state or federal law. In establishing secondary priorities, the department shall consider a variety of factors, including, but not limited to, current and projected traffic volume, safety requirements, economic development needs, current and projected demographic trends, and enhancement of the quality of life for all Nebraska citizens. The state highway system plan shall include the designation of those portions of the state highway system which shall be expressways.

**Source:** Laws 1988, LB 632, § 24; Laws 2010, LB821, § 1; Laws 2017, LB339, § 135.

Operative date July 1, 2017.

**39-1365.02 State highway system; federal funding; maximum use; department; report on system needs and planning procedures.**

(1) The department shall apply for and make maximum use of available federal funding, including discretionary funding, on all highway construction projects which are eligible for such assistance.

(2) The department shall transmit electronically to the Legislature, by December 1 of each year, a report on the needs of the state highway system, the department's planning procedures, and the progress being made on the expressway system. Such report shall include:

(a) The criteria by which highway needs are determined;

(b) The standards established for each classification of highways;

(c) An assessment of current and projected needs of the state highway system, such needs to be defined by category of improvement required to bring each segment up to standards. Projected fund availability shall not be a consideration by which needs are determined;

(d) Criteria and data, including factors enumerated in section 39-1365.01, upon which decisions may be made on possible special priority highways for commercial growth;

(e) A review of the department's procedure for selection of projects for the annual construction program, the five-year planning program, and extended planning programs;

(f) A review of the progress being made toward completion of the expressway system, as such system was designated on January 1, 2016, and whether such work is on pace for completion prior to June 30, 2033;

(g) A review of the Transportation Infrastructure Bank Fund and the fund's component programs under sections 39-2803 to 39-2807. This review shall include a listing of projects funded and planned to be funded under each of the three component programs; and

(h) A review of the outcomes of the Economic Opportunity Program, including the growth in permanent jobs and related income and the net increase in overall business activity.

**Source:** Laws 1988, LB 632, § 25; Laws 2012, LB782, § 40; Laws 2016, LB960, § 27; Laws 2017, LB339, § 136.  
Operative date July 1, 2017.

#### (I) STATE RECREATION ROADS

##### **39-1390 State Recreation Road Fund; created; use; preferences; maintenance; investment.**

The State Recreation Road Fund is created. The money in the fund shall be transferred by the State Treasurer, on the first day of each month, to the department and shall be expended by the Director-State Engineer with the approval of the Governor for construction and maintenance of dustless-surface roads to be designated as state recreation roads as provided in this section, except that (1) transfers may be made from the fund to the State Park Cash Revolving Fund at the direction of the Legislature through July 31, 2016, and (2) if the balance in the State Recreation Road Fund exceeds fourteen million dollars on the first day of each month, the State Treasurer shall transfer the amount greater than fourteen million dollars to the Game and Parks State Park Improvement and Maintenance Fund. Except as to roads under contract as of March 15, 1972, those roads, excluding state highways, giving direct and immediate access to or located within state parks, state recreation areas, or other recreational or historical areas, shall be eligible for designation as state recreation roads. Such eligibility shall be determined by the Game and Parks Commission and certified to the Director-State Engineer, who shall, after receiving such certification, be authorized to commence construction on such recreation roads as funds are available. In addition, those roads, excluding state highways, giving direct and immediate access to a state veteran cemetery are state recreation roads. After construction of such roads they shall be shown on the map provided by section 39-1311. Preference in construction shall be based on existing or potential traffic use by other than local residents. Unless the State Highway Commission otherwise recommends, such roads upon completion of construction shall be incorporated into the state highway system. If such a road is not incorporated into the state highway system, the department and the county within which such road is located shall enter into a maintenance agreement establishing the responsibility for maintenance of the road, the maintenance standards to be met, and the responsibility for maintenance costs. Any money in the State Recreation Road 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 1963, c. 348, § 2, p. 1119; Laws 1965, c. 225, § 1, p. 649; Laws 1965, c. 501, § 1, p. 1595; Laws 1969, c. 584, § 42, p. 2369; Laws 1972, LB 1131, § 1; Laws 1995, LB 7, § 36; Laws 2003, LB 408, § 1; Laws 2009, First Spec. Sess., LB3, § 20; Laws 2010, LB749, § 1; Laws 2014, LB906, § 15; Laws 2015, LB661, § 30; Laws 2017, LB339, § 137.  
Operative date July 1, 2017.

## Cross References

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

**39-1392 Exterior access roads; interior service roads; department; develop and file plans with Governor and Legislature; reviewed annually.**

The department shall develop and file with the Governor and the Legislature a one-year and a long-range five-year plan of scheduled design, construction, and improvement for all exterior access roads and interior service roads as certified to it by the Game and Parks Commission. The first such plans shall be filed on or before January 1, 1974. The plans shall be reviewed and extended annually, on or before January 1 of each year, so that there shall always be a current one-year and five-year plan on file. The plans submitted to the Legislature shall be submitted electronically. The department shall also, at the time it files such plans and extensions thereof, report the design, construction, and improvement accomplished during each of the two immediately preceding calendar years.

**Source:** Laws 1973, LB 374, § 2; Laws 2012, LB782, § 42; Laws 2017, LB339, § 138.

Operative date July 1, 2017.

## ARTICLE 14

## COUNTY ROADS. GENERAL PROVISIONS

## Section

39-1407. County road improvement projects; lettings; procedure; county board may authorize Department of Transportation to conduct; contractors' bonds.

**39-1407 County road improvement projects; lettings; procedure; county board may authorize Department of Transportation to conduct; contractors' bonds.**

Whenever contracts are to be let for road improvements, it shall be the duty of the county board to cause to be prepared and filed with the county clerk an estimate of the nature of the work and the cost thereof. After such estimate has been filed, bids for such contracts shall be advertised by publication of a notice thereof once a week for three consecutive weeks in a legal newspaper of the county prior to the date set for receiving bids. Bids shall be let to the lowest responsible bidder. The board shall have the discretionary power to reject any and all bids for sufficient cause. If all bids are rejected, the county board shall have the power to negotiate any contract for road improvements, but the county board shall adhere to all specifications that were required for the initial bids on contracts. The board shall have the discretionary power to authorize the Department of Transportation to take and let bids on behalf of the county at the offices of the department in Lincoln, Nebraska. When the bid is accepted the bidder shall enter into a sufficient bond for the use and benefit of the county, precinct, or township, for the faithful performance of the contract, and for the payment of all laborers employed in the performance of the work, and for the payment of all damages which the county, precinct, or township may sustain by reason of any failure to perform the work in the manner stipulated. It shall be the duty of the county to determine whether or not the work is performed in keeping with such contract before paying for the same.

**Source:** Laws 1957, c. 155, art. I, § 7, p. 510; Laws 1972, LB 1058, § 12; Laws 1975, LB 114, § 2; Laws 2017, LB339, § 139.

Operative date July 1, 2017.



**ARTICLE 15**

**COUNTY ROADS. ORGANIZATION AND ADMINISTRATION**

(a) COUNTY HIGHWAY BOARD

Section

39-1503. Highway superintendent or road unit system counties; county boards; duties.

(b) COUNTY HIGHWAY SUPERINTENDENT

39-1506. County highway superintendent; qualifications.

(a) COUNTY HIGHWAY BOARD

**39-1503 Highway superintendent or road unit system counties; county boards; duties.**

It shall be the duty of the county board in commissioner-type counties having a county highway superintendent and in township-type counties having adopted a county road unit system to:

(1) Give notice to the public of the date set for public hearings upon the proposed county highway program of the county highway superintendent for the forthcoming year by publication once a week for three consecutive weeks in a legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county. The notice shall clearly state the purpose, time, and place of such public hearings;

(2) Adopt a county highway annual program no later than March 1 of each year which shall include a schedule of construction, repair, and maintenance projects and the order of priority of such projects to be undertaken and carried out by the county and a list of equipment to be purchased and the priority of such purchases, within the limits of the estimated funds available during the next twelve months;

(3) Adopt standards to be applied in road and bridge repair, maintenance, and construction;

(4) Advertise for and take and let bids for all or any portion of the county road work when letting bids, except that when the Department of Transportation takes bids on behalf of the county, the county shall have authority to permit such bids to be taken and let at the offices of the department in Lincoln, Nebraska; and

(5) Cause investigations, studies, and inspections to be made, hold public hearings, and do all other things necessary to carry out the duties imposed upon it by law.

**Source:** Laws 1957, c. 155, art. II, § 3, p. 514; Laws 1969, c. 333, § 3, p. 1190; Laws 1986, LB 960, § 28; Laws 2017, LB339, § 140. Operative date July 1, 2017.

(b) COUNTY HIGHWAY SUPERINTENDENT

**39-1506 County highway superintendent; qualifications.**

Any person, whether or not a resident of the county, who is a duly licensed engineer in this state, any firm of consulting engineers duly licensed in this state, or any other person who is a competent, experienced, practical road builder shall be qualified to serve as county highway superintendent, except

that no member of the county board shall be eligible for appointment. In counties having a population of sixty thousand but less than one hundred fifty thousand inhabitants according to the most recent official United States census, the county surveyor shall perform all the duties and possess all the powers and functions of the county highway superintendent. In counties having a population of one hundred fifty thousand or more inhabitants, the county engineer shall serve as county highway superintendent.

**Source:** Laws 1957, c. 155, art. II, § 6, p. 515; Laws 1982, LB 127, § 9; Laws 1986, LB 512, § 3; Laws 2017, LB200, § 4.  
Effective date August 24, 2017.

**ARTICLE 17**

**COUNTY ROADS. LAND ACQUISITION, ESTABLISHMENT, ALTERATION, SURVEY, RELOCATION, VACATION, AND ABANDONMENT**

(a) LAND ACQUISITION

Section

39-1703. State lands; acquisition for county road purposes; approval of Governor and Department of Transportation; damages.

(b) ESTABLISHMENT, ALTERATION, AND SURVEY

39-1713. Isolated land; access; affidavit; petition; hearing before county board; time; terms, defined.

(a) LAND ACQUISITION

**39-1703 State lands; acquisition for county road purposes; approval of Governor and Department of Transportation; damages.**

The county board of any county and the governing authority of any city or village may acquire land owned, occupied, or controlled by the state or any state institution, board, agency, or commission, whenever such land is necessary to construct, reconstruct, improve, relocate, or maintain a county road or a city or village street or to provide adequate drainage for such roads or streets. The procedure for such acquisition shall, as nearly as possible, be that provided in sections 72-224.02 and 72-224.03. Prior to taking any land for any such purposes, a certificate that the taking of such land is in the public interest must be obtained from the Governor and from the Department of Transportation and be filed in the office of the Department of Administrative Services and a copy thereof in the office of the Board of Educational Lands and Funds. The damages assessed in such proceedings shall be paid to the Board of Educational Lands and Funds and shall be remitted by that board to the State Treasurer for credit to the proper account.

**Source:** Laws 1957, c. 155, art. IV, § 3, p. 542; Laws 1969, c. 317, § 10, p. 1149; Laws 2017, LB339, § 141.  
Operative date July 1, 2017.

(b) ESTABLISHMENT, ALTERATION, AND SURVEY

**39-1713 Isolated land; access; affidavit; petition; hearing before county board; time; terms, defined.**

(1) When any person presents to the county board an affidavit satisfying it (a) that he or she is the owner of the real estate described therein located within

the county, (b) that such real estate is shut out from all public access, other than a waterway, by being surrounded on all sides by real estate belonging to other persons, or by such real estate and by water, (c) that he or she is unable to purchase from any of such persons the right-of-way over or through the same to a public road or that it cannot be purchased except at an exorbitant price, stating the lowest price for which the same can be purchased by him or her, and (d) asking that an access road be provided in accordance with section 39-1716, the county board shall appoint a time and place for hearing the matter, which hearing shall be not more than thirty days after the receipt of such affidavit. The application for an access road may be included in a separate petition instead of in such affidavit.

(2) For purposes of sections 39-1713 to 39-1719:

(a) Access road means a right-of-way open to the general public for ingress to and egress from a tract of isolated land provided in accordance with section 39-1716; and

(b) State of Nebraska includes the Board of Educational Lands and Funds, Board of Regents of the University of Nebraska, Board of Trustees of the Nebraska State Colleges, Department of Transportation, Department of Administrative Services, and Game and Parks Commission and all other state agencies, boards, departments, and commissions.

**Source:** Laws 1957, c. 155, art. IV, § 13, p. 544; Laws 1982, LB 239, § 1; Laws 1999, LB 779, § 4; Laws 2017, LB339, § 142.  
Operative date July 1, 2017.

**ARTICLE 18**

**COUNTY ROADS. MAINTENANCE**

Section

- 39-1804. Main thoroughfare through cities and villages of 1,500 inhabitants or less; graveling by county; when authorized; chargeable to Highway Allocation Fund.
- 39-1811. Weeds; mowing; duty of landowner; neglect of duty; obligation of county board; cost; assessment and collection.

**39-1804 Main thoroughfare through cities and villages of 1,500 inhabitants or less; graveling by county; when authorized; chargeable to Highway Allocation Fund.**

The county board may, with the approval of the mayor and council or the chairperson and board of trustees, as the case may be, whenever conditions warrant, furnish, deliver, and spread gravel of a depth not exceeding three inches on certain streets in cities of the second class and villages having a population of not more than fifteen hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census and shall charge the cost of such improvement to that portion of the Highway Allocation Fund allocated to such counties from the Highway Trust Fund under section 39-2215. No improvement of any street or streets in cities of the second class or villages having a population of not more than fifteen hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall be made under the provisions of this section unless the street or streets, when graveled, will constitute one

main thoroughfare through such city or village that connects with or forms a part of the county highway system of such county which has been or which shall be graveled up to the corporate limits of such city or village. Before being entitled to such county aid in graveling such thoroughfare, the same must have been properly graded by such city or village in accordance with the grade established in the construction of the county road system.

**Source:** Laws 1957, c. 155, art. V, § 4, p. 553; Laws 1972, LB 1058, § 13; Laws 1986, LB 599, § 10; Laws 2017, LB113, § 41.  
Effective date August 24, 2017.

**39-1811 Weeds; mowing; duty of landowner; neglect of duty; obligation of county board; cost; assessment and collection.**

(1) It shall be the duty of the landowners in this state to mow all weeds that can be mowed with the ordinary farm mower to the middle of all public roads and drainage ditches running along their lands at least twice each year, namely, sometime in July for the first time and sometime in September for the second time.

(2) This section shall not restrict landowners, a county, or a township from management of (a) roadside vegetation on road shoulders or of sight distances at intersections and entrances at any time of the year or (b) snow control mowing as may be necessary.

(3) Except as provided in subsection (2) of this section, no person employed by or under contract with a county or township to mow roadside ditches shall do such mowing before July 1 of any year.

(4) Whenever a landowner, referred to in subsections (1) and (5) of this section, neglects to mow the weeds as provided in this section, it shall be the duty of the county board on complaint of any resident of the county to cause the weeds to be mowed or otherwise destroyed on neglected portions of roads or ditches complained of.

(5) The county board shall cause to be ascertained and recorded an accurate account of the cost of mowing or destroying such weeds, as referred to in subsections (1) and (4) of this section, in such places, specifying, in such statement or account of costs, the description of the land abutting upon each side of the highway where such weeds were mowed or destroyed, and, if known, the name of the owner of such abutting land. The board shall file such statement with the county clerk, together with a description of the lands abutting on each side of the road where such expenses were incurred, and the county board, at the time of the annual tax levy made upon lands and property of the county, may, if it desires, assess such cost upon such abutting land, giving such landowner due notice of such proposed assessment and reasonable opportunity to be heard concerning the proposed assessment before the same is finally made.

**Source:** Laws 1957, c. 155, art. V, § 11, p. 555; Laws 2017, LB584, § 1.  
Effective date August 24, 2017.

**ARTICLE 19**

**COUNTY ROADS. ROAD FINANCES**

Section

39-1901. Road damages; payment from general fund; barricades by Department of Transportation; payment by department; claimant's petition.

**39-1901 Road damages; payment from general fund; barricades by Department of Transportation; payment by department; claimant’s petition.**

All damages caused by the laying out, altering, opening, or discontinuing of any county road shall be paid by warrant on the general fund of the county in which such road is located, except that the Department of Transportation shall pay the damages, if any, which a person sustains and is legally entitled to recover because of the barricading of a county or township road pursuant to section 39-1728. Upon the failure of the party damaged and the county to agree upon the amount of damages, the damaged party, in addition to any other available remedy, may file a petition as provided for in section 76-705.

**Source:** Laws 1957, c. 155, art. VI, § 1, p. 558; Laws 2017, LB339, § 143. Operative date July 1, 2017.

**ARTICLE 20**

**COUNTY ROAD CLASSIFICATION**

Section

- 39-2001. Designation of primary and secondary county roads by county board; procedure; determination by Department of Transportation; when; certification; record.
- 39-2002. County primary road system; designation by county board; when; redesignation of primary roads; procedure; current map kept on file.

**39-2001 Designation of primary and secondary county roads by county board; procedure; determination by Department of Transportation; when; certification; record.**

(1) The county board of each county shall select and designate, from the laid out and platted public roads within the county, certain roads to be known as primary and secondary county roads. Primary county roads shall include (a) direct highways leading to and from rural schools where ten or more grades are being taught, (b) highways connecting cities, villages, and market centers, (c) rural mail route and star mail route roads, (d) main-traveled roads, and (e) such other roads as are designated as such by the county board. All county roads not designated as primary county roads shall be secondary county roads.

(2) As soon as the primary county roads are designated as provided by subsection (1) of this section, the county board shall cause such primary county roads to be plainly marked on a map to be deposited with the county clerk and be open to public inspection. Upon filing the map the county clerk shall at once fix a date of hearing thereon, which shall not be more than twenty days nor less than ten days from the date of filing. Notice of the filing of the map and of the date of such hearing shall be published prior to the hearing in one issue of each newspaper published in the English language in the county.

(3) At any time before the hearing provided for by subsection (2) of this section is concluded, any ten freeholders of the county may file a petition with the county clerk asking for any change in the designated primary county roads, setting forth the reason for the proposed change. Such petition shall be accompanied by a plat showing such proposed change.

(4) The roads designated on the map by the county board shall be conclusively established as the primary roads. If no agreement is reached between the county board and the petitioners at the hearing, the county clerk shall forward

the map, together with all petitions and plats, to the Department of Transportation.

(5) The department shall, upon receipt of the maps, petitions, and plats, proceed to examine the same, and shall determine the lines to be followed by the said county roads, having regard to volume of traffic, continuity, and cost of construction. The department shall, not later than twenty days from the receipt thereof, return the papers to the county clerk, together with the decision of the department in writing, duly certified, and accompanied by a plat showing the lines of the county roads as finally determined. The county clerk shall file the papers and record the decision, and the same shall be conclusive as to the lines of the county roads established therein.

**Source:** Laws 1957, c. 155, art. VII, § 1, p. 560; Laws 2017, LB339, § 144.

Operative date July 1, 2017.

**39-2002 County primary road system; designation by county board; when; redesignation of primary roads; procedure; current map kept on file.**

The county board of each county shall select and designate, within six months from January 1, 1958, the roads which will be county primary roads and which will constitute the county primary road system. Such roads shall be selected from those roads which already have been designated as primary county roads pursuant to section 39-2001 or from those roads which were maintained by the Department of Transportation under section 39-1309. The primary county roads shall include only the more important county roads as determined by the actual or potential traffic volumes and other traffic survey data.

The county board of each county shall have authority to redesignate the county primary roads from time to time by naming additional roads as primary roads and by rescinding the designation of existing county primary roads. The county board shall follow the same procedure for redesignation as is required by law for initially designating the county primary roads. The principle of designating only the more important county roads as primary roads as determined by the actual or potential traffic volumes and other traffic survey data shall be adhered to.

A copy of a current map of the county roads showing the location of roads and bridges and reflecting the county primary road system as designated in this section shall be kept on file and available to public inspection at the office of the county clerk and with the department.

**Source:** Laws 1957, c. 155, art. VII, § 2, p. 561; Laws 1963, c. 240, § 1, p. 730; Laws 2017, LB339, § 145.

Operative date July 1, 2017.

**ARTICLE 21**

**FUNCTIONAL CLASSIFICATION**

Section

39-2103. Rural highways; functional classifications.

39-2105. Functional classifications; jurisdictional responsibility.

39-2106. Board of Public Roads Classifications and Standards; established; members; number; appointment; qualifications; compensation; expenses.

39-2107. Board of Public Roads Classifications and Standards; office space; furniture; equipment; supplies; personnel.

Section	
39-2110.	Functional classification; specific criteria; assignment to highways, roads, streets.
39-2111.	Functional classification; assignment; appeal.
39-2112.	Functional classification; assignment; Department of Transportation; request to reclassify; county board; public hearing; decision; appeal.
39-2113.	Board of Public Roads Classifications and Standards; minimum standards; signs required; when; rule for relaxing; request for review; decision.
39-2115.	Six-year plan; basis; filing; failure to file; penalty; funds placed in escrow.
39-2116.	Board of Public Roads Classifications and Standards; review of plans and programs; recommendations.
39-2118.	Department of Transportation; plan for specific highway improvements; file annually with Board of Public Roads Classifications and Standards; review.
39-2120.	Standardized system of annual reporting; Auditor of Public Accounts and Board of Public Roads Classifications and Standards; develop.
39-2121.	Department of Transportation; counties; municipalities; reports; penalty; when imposed; appeal.
39-2124.	Legislative intent.

### **39-2103 Rural highways; functional classifications.**

Rural highways are hereby divided into nine functional classifications as follows:

(1) Interstate, which shall consist of the federally designated National System of Interstate and Defense Highways;

(2) Expressway, which shall consist of a group of highways following major traffic desires in Nebraska which rank next in importance to the National System of Interstate and Defense Highways. The expressway system is one which ultimately should be developed to multilane divided highway standards;

(3) Major arterial, which shall consist of the balance of routes which serve major statewide interests for highway transportation. This system is characterized by high-speed, relatively long-distance travel patterns;

(4) Scenic-recreation, which shall consist of highways or roads located within or which provide access to or through state parks, recreation or wilderness areas, other areas of geographical, historical, geological, recreational, biological, or archaeological significance, or areas of scenic beauty;

(5) Other arterial, which shall consist of a group of highways of less importance as through-travel routes which would serve places of smaller population and smaller recreation areas not served by the higher systems;

(6) Collector, which shall consist of a group of highways which pick up traffic from many local or land-service roads and carry it to community centers or to the arterial systems. They are the main school bus routes, mail routes, and farm-to-market routes;

(7) Local, which shall consist of all remaining rural roads, except minimum maintenance roads and remote residential roads;

(8) Minimum maintenance, which shall consist of (a) roads used occasionally by a limited number of people as alternative access roads for areas served primarily by local, collector, or arterial roads or (b) roads which are the principal access roads to agricultural lands for farm machinery and which are not primarily used by passenger or commercial vehicles; and

(9) Remote residential, which shall consist of roads or segments of roads in remote areas of counties with (a) a population density of no more than five people per square mile or (b) an area of at least one thousand square miles, and

which roads or segments of roads serve as primary access to no more than seven residences. For purposes of this subdivision, residence means a structure which serves as a primary residence for more than six months of a calendar year. Population shall be determined using data from the most recent federal decennial census.

The rural highways classified under subdivisions (1) through (3) of this section should, combined, serve every incorporated municipality having a minimum population of one hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census or sufficient commerce, a part of which will be served by stubs or spurs, and along with rural highways classified under subdivision (4) of this section, should serve the major recreational areas of the state.

For purposes of this section, sufficient commerce means a minimum of two hundred thousand dollars of gross receipts under the Nebraska Revenue Act of 1967.

**Source:** Laws 1969, c. 312, § 3, p. 1119; Laws 1972, LB 866, § 2; Laws 1976, LB 724, § 1; Laws 1980, LB 873, § 1; Laws 1983, LB 10, § 3; Laws 2008, LB1068, § 4; Laws 2017, LB113, § 42.  
Effective date August 24, 2017.

**Cross References**

Nebraska Revenue Act of 1967, see section 77-2701.

**39-2105 Functional classifications; jurisdictional responsibility.**

Jurisdictional responsibility for the various functional classifications of public highways and streets shall be as follows:

(1) The state shall have the responsibility for the design, construction, reconstruction, maintenance, and operation of all roads classified under the category of rural highways as interstate, expressway, and major arterial, and the municipal extensions thereof, except that the state shall not be responsible for that portion of a municipal extension which exceeds the design of the rural highway leading into the municipality. When the design of a rural highway differs at the different points where it leads into the municipality, the state's responsibility for the municipal extension thereof shall be limited to the lesser of the two designs. The state shall be responsible for the entire interstate system under either the rural or municipal category and for connecting links between the interstate and the nearest existing state highway system in rural areas, except that if such a connecting link has not been improved and a sufficient study by the Department of Transportation results in the determination that a link to an alternate state highway would provide better service for the area involved, the department shall have the option of providing the alternate route, subject to satisfactory local participation in the additional cost of the alternate route;

(2) The various counties shall have the responsibility for the design, construction, reconstruction, maintenance, and operation of all roads classified as other arterial, collector, local, minimum maintenance, and remote residential under the rural highway category;

(3) The various incorporated municipalities shall have the responsibility for the design, construction, reconstruction, maintenance, and operation of all



streets classified as expressway which are of a purely local nature, that portion of municipal extensions of rural expressways and major arterials which exceeds the design of the rural portions of such systems, and responsibility for those streets classified as other arterial, collector, and local within their corporate limits; and

(4) Jurisdictional responsibility for all scenic-recreation roads and highways shall remain with the governmental subdivision which had jurisdictional responsibility for such road or highway prior to its change in classification to scenic-recreation made pursuant to this section and sections 39-2103, 39-2109, and 39-2113.

**Source:** Laws 1969, c. 312, § 5, p. 1121; Laws 1971, LB 738, § 1; Laws 1980, LB 873, § 2; Laws 1983, LB 10, § 4; Laws 2008, LB1068, § 5; Laws 2017, LB339, § 146.  
Operative date July 1, 2017.

**39-2106 Board of Public Roads Classifications and Standards; established; members; number; appointment; qualifications; compensation; expenses.**

To assist in developing the functional classification system, there is hereby established the Board of Public Roads Classifications and Standards which shall consist of eleven members to be appointed by the Governor with the approval of the Legislature. Of the members of such board, two shall be representatives of the Department of Transportation, three shall be representatives of the counties, one of whom shall be a licensed county highway superintendent in good standing and two of whom shall be county board members, three shall be representatives of the municipalities who shall be either public works directors or licensed city street superintendents in good standing, and three shall be lay citizens who shall represent the three congressional districts of the state. The county members on the board shall represent the various classes of counties, as defined in section 23-1114.01, in the following manner: One shall be a representative from either a Class 1 or Class 2 county; one shall be a representative from either a Class 3 or Class 4 county; and one shall be a representative from either a Class 5, Class 6, or Class 7 county. The municipal members of the board shall represent municipalities of the following sizes by population: One shall be a representative from a municipality of less than two thousand five hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census; one shall be a representative from a municipality of two thousand five hundred to fifty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census; and one shall be a representative from a municipality of over fifty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census. In making such appointments, the Governor shall consult with the Director-State Engineer and with the appropriate county and municipal officials and may consult with organizations representing such officials or representing counties or municipalities as may be appropriate. At the expiration of the existing term, one member from the county representatives, the municipal representatives, and the lay citizens shall be appointed for a term of two years; and two members from the county representatives, the municipal representatives, and the lay citizens shall be appointed for terms of four years. One representative from the department shall be appointed for a

two-year term and the other representative shall be appointed for a four-year term. Thereafter, all such appointments shall be for terms of four years each. Members of such board shall receive no compensation for their services as such, except that the lay members shall receive the same compensation as members of the State Highway Commission, and all members shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as provided in sections 81-1174 to 81-1177 for state employees. All expenses of such board shall be paid by the department.

**Source:** Laws 1969, c. 312, § 6, p. 1122; Laws 1971, LB 100, § 1; Laws 1981, LB 204, § 61; Laws 2017, LB113, § 43; Laws 2017, LB339, § 147.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB113, section 43, with LB339, section 147, to reflect all amendments.

**Note:** Changes made by LB339 became operative July 1, 2017. Changes made by LB113 became effective August 24, 2017.

**39-2107 Board of Public Roads Classifications and Standards; office space; furniture; equipment; supplies; personnel.**

The Department of Transportation shall furnish the Board of Public Roads Classifications and Standards with necessary office space, furniture, equipment, and supplies as well as necessary professional, technical, and clerical assistants.

**Source:** Laws 1969, c. 312, § 7, p. 1123; Laws 2017, LB339, § 148.  
Operative date July 1, 2017.

**39-2110 Functional classification; specific criteria; assignment to highways, roads, streets.**

Following adoption and publication of the specific criteria required by section 39-2109, the Department of Transportation, after consultation with the appropriate local authorities in each instance, shall assign a functional classification to each segment of highway, road, and street in this state. Before assigning any such classification, the department shall make reasonable effort to resolve any differences of opinion between the department and any county or municipality. Whenever a new road or street is to be opened or an existing road or street is to be extended, the department shall, upon a request from the operating jurisdiction, assign a functional classification to such segment in accordance with the specific criteria established under section 39-2109.

**Source:** Laws 1969, c. 312, § 10, p. 1123; Laws 2008, LB1068, § 7; Laws 2017, LB339, § 149.  
Operative date July 1, 2017.

**39-2111 Functional classification; assignment; appeal.**

The county or municipality may appeal to the Board of Public Roads Classifications and Standards from any action taken by the Department of Transportation in assigning any functional classification under section 39-2110. Upon the taking of such an appeal, the board shall review all information pertaining to the assignment, hold a hearing thereon if deemed advisable, and render a decision on the assigned classification. The decision of the board may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1969, c. 312, § 11, p. 1123; Laws 1971, LB 100, § 2; Laws 1988, LB 352, § 32; Laws 2017, LB339, § 150.  
Operative date July 1, 2017.

## Cross References

Administrative Procedure Act, see section 84-920.

**39-2112 Functional classification; assignment; Department of Transportation; request to reclassify; county board; public hearing; decision; appeal.**

Any county or municipality may, based on changing traffic patterns or volume or a change in jurisdiction, request the Department of Transportation to reclassify any segment of highway, road, or street. Any county that wants to use the minimum maintenance, remote residential, or scenic-recreation functional classification or wants to return a road to its previous functional classification may request the department to reclassify an applicable segment of highway or road. If a county board wants a road or a segment of road to be classified as remote residential, it shall hold a public hearing on the matter prior to requesting the department to reclassify such road or segment of road. The department shall review a request made under this section and either grant or deny the reclassification in whole or in part. Any county or municipality dissatisfied with the action taken by the department under this section may appeal to the Board of Public Roads Classifications and Standards in the manner provided in section 39-2111.

**Source:** Laws 1969, c. 312, § 12, p. 1124; Laws 1971, LB 100, § 3; Laws 2008, LB1068, § 8; Laws 2017, LB339, § 151.  
Operative date July 1, 2017.

**39-2113 Board of Public Roads Classifications and Standards; minimum standards; signs required; when; rule for relaxing; request for review; decision.**

(1) In addition to the duties imposed upon it by section 39-2109, the Board of Public Roads Classifications and Standards shall develop minimum standards of design, construction, and maintenance for each functional classification set forth in sections 39-2103 and 39-2104. Except for scenic-recreation road standards, such standards shall be such as to assure that each segment of highway, road, or street will satisfactorily meet the requirements of the area it serves and the traffic patterns and volumes which it may reasonably be expected to bear.

(2) The standards for a scenic-recreation road and highway classification shall insure a minimal amount of environmental disruption practicable in the design, construction, and maintenance of such highways, roads, and streets by the use of less restrictive, more flexible design standards than other highway classifications. Design elements of such a road or highway shall incorporate parkway-like features which will allow the user-motorist to maintain a leisurely pace and enjoy the scenic and recreational aspects of the route and include rest areas and scenic overlooks with suitable facilities.

(3) The standards developed for a minimum maintenance road and highway classification shall provide for a level of minimum maintenance sufficient to serve farm machinery and the occasional or intermittent use by passenger and commercial vehicles. The standards shall provide that any defective bridges, culverts, or other such structures on, in, over, under, or part of the minimum maintenance road may be removed by the county in order to protect the public safety and need not be replaced by equivalent structures except when deemed by the county board to be essential for public safety or for the present or future transportation needs of the county. The standards for such minimum maintenance roads shall include the installation and maintenance by the county at

entry points to minimum maintenance roads and at regular intervals thereon of appropriate signs to adequately warn the public that the designated section of road has a lower level of maintenance effort than other public roads and thoroughfares. Such signs shall conform to the requirements in the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(4) The standards developed for a remote residential road classification shall provide for a level of maintenance sufficient to provide access to remote residences, farms, and ranches by passenger and commercial vehicles. The standards shall allow for one-lane traffic where sight distance is adequate to warn motorists of oncoming traffic. The standards for remote residential roads shall include the installation and maintenance by the county at entry points to remote residential roads of appropriate signs to adequately warn members of the public that they are traveling on a one-lane road. Such signs shall conform to the requirements in the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(5) The board shall by rule provide for the relaxation of standards for any functional classification in those instances in which their application is not feasible because of peculiar, special, or unique local situations.

(6) Any county or municipality which believes that the application of standards for any functional classification to any segment of highway, road, or street would work a special hardship, or any other interested party which believes that the application of standards for scenic-recreation roads and highways to any segment of highway, road, or street would defeat the purpose of the scenic-recreation functional classification contained in section 39-2103, may request the board to relax the standards for such segment. The Department of Transportation, when it believes that the application of standards for any functional classification to any segment of highway that is not hard surfaced would work a special hardship, may request the board to relax such standards. The board shall review any request made pursuant to this section and either grant or deny it in whole or in part. This section shall not be construed to apply to removal of a road or highway from the state highway system pursuant to section 39-1315.01.

**Source:** Laws 1969, c. 312, § 13, p. 1124; Laws 1973, LB 324, § 1; Laws 1980, LB 873, § 4; Laws 1983, LB 10, § 6; Laws 1993, LB 370, § 42; Laws 2008, LB1068, § 9; Laws 2017, LB339, § 152.  
Operative date July 1, 2017.

**39-2115 Six-year plan; basis; filing; failure to file; penalty; funds placed in escrow.**

The Department of Transportation and each county and municipality shall develop and file with the Board of Public Roads Classifications and Standards a long-range, six-year plan of highway, road, and street improvements based on priority of needs and calculated to contribute to the orderly development of an integrated statewide system of highways, roads, and streets. Each such plan shall be filed with the board promptly upon preparation but in no event later than March 1, 1971. If any county or municipality, or the department, shall fail to file its plan on or before such date, the board shall so notify the local governing board, the Governor, and the State Treasurer, who shall suspend distribution of any highway-user revenue allocated to such county or municipality, or the department, until the plan has been filed. Such funds shall be held

in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality.

**Source:** Laws 1969, c. 312, § 15, p. 1124; Laws 1971, LB 100, § 4; Laws 1973, LB 137, § 1; Laws 1976, LB 724, § 2; Laws 2017, LB339, § 153.

Operative date July 1, 2017.

**39-2116 Board of Public Roads Classifications and Standards; review of plans and programs; recommendations.**

The Board of Public Roads Classifications and Standards shall review all six-year plans required by sections 39-2115 to 39-2117 or annual metropolitan transportation improvement programs under section 39-2119.01 submitted to it and make such recommendations for changes therein as it believes necessary or desirable in order to achieve the orderly development of an integrated system of highways, roads, and streets, but in so doing the board shall take into account the fact that individual priorities of needs may not lend themselves to immediate integration. The Department of Transportation and each county and municipality shall give careful and serious consideration to any such recommendations received from the board and shall not reject them except for substantial or compelling reason.

**Source:** Laws 1969, c. 312, § 16, p. 1125; Laws 1971, LB 100, § 5; Laws 2007, LB277, § 2; Laws 2017, LB339, § 154.

Operative date July 1, 2017.

**39-2118 Department of Transportation; plan for specific highway improvements; file annually with Board of Public Roads Classifications and Standards; review.**

The Department of Transportation shall annually prepare and file with the Board of Public Roads Classifications and Standards a plan for specific highway improvements for the current year. The annual plan shall be filed on or before July 1 of each year. In so doing, the department shall take into account all federal funds which will be available to the department for such year. The board shall review each such annual plan to determine whether it is consistent with the department's current six-year plan. The department shall be required to justify any inconsistency with the six-year plan to the satisfaction of the board.

**Source:** Laws 1969, c. 312, § 18, p. 1125; Laws 1971, LB 100, § 7; Laws 1976, LB 724, § 4; Laws 2017, LB339, § 155.

Operative date July 1, 2017.

**39-2120 Standardized system of annual reporting; Auditor of Public Accounts and Board of Public Roads Classifications and Standards; develop.**

The Auditor of Public Accounts and the Board of Public Roads Classifications and Standards shall develop and schedule for implementation a standardized system of annual reporting to the board by the Department of Transportation and by counties and municipalities, which system shall include:

- (1) A procedure for documenting and certifying that standards of design, construction, and maintenance of roads and streets have been met;
- (2) A procedure for documenting and certifying that all tax revenue for road or street purposes has been expended in accordance with approved plans and standards, to include county and municipal tax revenue, as well as highway-user revenue allocations made by the state;
- (3) A uniform system of accounting which clearly indicates, through a system of reports, a comparison of receipts and expenditures to approved budgets and programs;
- (4) A system of budgeting which reflects uses and sources of funds in terms of programs and accomplishments;
- (5) An approved system of reporting an inventory of machinery, equipment, and supplies; and
- (6) An approved system of cost accounting of the operation of equipment.

**Source:** Laws 1969, c. 312, § 20, p. 1126; Laws 1971, LB 100, § 9; Laws 2017, LB339, § 156.

Operative date July 1, 2017.

**39-2121 Department of Transportation; counties; municipalities; reports; penalty; when imposed; appeal.**

(1) The Department of Transportation and each county and municipality shall make the reports provided for by section 39-2120.

(2) If any county or municipality or the department fails to file such report on or before its due date, the Board of Public Roads Classifications and Standards shall so notify the local governing board, the Governor, and the State Treasurer who shall suspend distribution of any highway-user revenue allocated to such county or municipality or the department until the report has been filed. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality.

(3) If any county or municipality either (a) files a materially false report or (b) constructs any highway, road, or street below the minimum standards developed under section 39-2113, without having received prior approval thereof, such county's or municipality's share of highway-user revenue allocated during the following calendar year shall be reduced by ten percent and the amount of any such reduction shall be distributed among the other counties or municipalities, as appropriate, in the manner provided by law for allocation of highway-user revenue. The penalty for filing a materially false report and the penalty for constructing a highway, road, or street below established minimum standards without prior approval shall be assessed by the board only after a review of the facts involved in such case and the holding of a public hearing on the matter. The decision thereafter rendered by the board may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1969, c. 312, § 21, p. 1127; Laws 1971, LB 100, § 10; Laws 1973, LB 137, § 3; Laws 1976, LB 724, § 6; Laws 1988, LB 352, § 33; Laws 2017, LB339, § 157.

Operative date July 1, 2017.

## Cross References

Administrative Procedure Act, see section 84-920.

**39-2124 Legislative intent.**

It is the intent of the Legislature to recognize the responsibilities of the Department of Transportation, of the counties, and of the municipalities in their planning programs as authorized by state law and by home rule charter and to encourage the acceptance and implementation of comprehensive, continuing, cooperative, and coordinated planning by the state, the counties, and the municipalities. Sections 13-914 and 39-2101 to 39-2125 are not intended to prohibit or inhibit the actions of the counties and of the municipalities in their planning programs and their subdivision regulations, nor are sections 13-914 and 39-2101 to 39-2125 intended to restrict the actions of the municipalities in their creation of street improvement districts and in their assessment of property for special benefits as authorized by state law or by home rule charter.

**Source:** Laws 1969, c. 312, § 24, p. 1128; Laws 1971, LB 100, § 13; Laws 1983, LB 10, § 8; Laws 2007, LB277, § 5; Laws 2017, LB339, § 158.

Operative date July 1, 2017.

**ARTICLE 22****NEBRASKA HIGHWAY BONDS**

## Section

- 39-2215. Highway Trust Fund; created; allocation; investment; State Treasurer; transfer; disbursements.  
39-2224. Bonds; sale; proceeds; appropriated to Highway Cash Fund.

**39-2215 Highway Trust Fund; created; allocation; investment; State Treasurer; transfer; disbursements.**

(1) There is hereby created in the state treasury a special fund to be known as the Highway Trust Fund.

(2) All funds credited to the Highway Trust Fund pursuant to sections 66-489.02, 66-499, 66-4,140, 66-4,147, 66-6,108, and 66-6,109.02, and related penalties and interest, shall be allocated as provided in such sections.

(3) All other motor vehicle fuel taxes, diesel fuel taxes, compressed fuel taxes, and alternative fuel fees related to highway use retained by the state, all motor vehicle registration fees retained by the state other than those fees credited to the State Recreation Road Fund pursuant to subdivision (3) of section 60-3,156, and other highway-user taxes imposed by state law and allocated to the Highway Trust Fund, except for the proceeds of the sales and use taxes derived from motor vehicles, trailers, and semitrailers credited to the fund pursuant to section 77-27,132, are hereby irrevocably pledged for the terms of the bonds issued prior to January 1, 1988, to the payment of the principal, interest, and redemption premium, if any, of such bonds as they mature and become due at maturity or prior redemption and for any reserves therefor and shall, as received by the State Treasurer, be deposited in the fund for such purpose.

(4) Of the money in the fund specified in subsection (3) of this section which is not required for the use specified in such subsection, (a) an amount to be determined annually by the Legislature through the appropriations process may be transferred to the Motor Fuel Tax Enforcement and Collection Cash Fund

for use as provided in section 66-738 on a monthly or other less frequent basis as determined by the appropriation language, (b) an amount to be determined annually by the Legislature through the appropriations process shall be transferred to the License Plate Cash Fund as certified by the Director of Motor Vehicles, and (c) the remaining money may be used for the purchase for retirement of the bonds issued prior to January 1, 1988, in the open market.

(5) The State Treasurer shall monthly transfer, from the proceeds of the sales and use taxes credited to the Highway Trust Fund and any money remaining in the fund after the requirements of subsections (2) through (4) of this section are satisfied, thirty thousand dollars to the Grade Crossing Protection Fund.

(6) Except as provided in subsection (7) of this section, the balance of the Highway Trust Fund shall be allocated fifty-three and one-third percent, less the amount provided for in section 39-847.01, to the Department of Transportation, twenty-three and one-third percent, less the amount provided for in section 39-847.01, to the various counties for road purposes, and twenty-three and one-third percent to the various municipalities for street purposes. If bonds are issued pursuant to subsection (2) of section 39-2223, the portion allocated to the department shall be credited monthly to the Highway Restoration and Improvement Bond Fund, and if no bonds are issued pursuant to such subsection, the portion allocated to the department shall be credited monthly to the Highway Cash Fund. The portions allocated to the counties and municipalities shall be credited monthly to the Highway Allocation Fund and distributed monthly as provided by law. Vehicles accorded prorated registration pursuant to section 60-3,198 shall not be included in any formula involving motor vehicle registrations used to determine the allocation and distribution of state funds for highway purposes to political subdivisions.

(7) If it is determined by December 20 of any year that a county will receive from its allocation of state-collected highway revenue and from any funds relinquished to it by municipalities within its boundaries an amount in such year which is less than such county received in state-collected highway revenue in calendar year 1969, based upon the 1976 tax rates for highway-user fuels and registration fees, the department shall notify the State Treasurer that an amount equal to the sum necessary to provide such county with funds equal to such county's 1969 highway allocation for such year shall be transferred to such county from the Highway Trust Fund. Such makeup funds shall be matched by the county as provided in sections 39-2501 to 39-2510. The balance remaining in the fund after such transfer shall then be reallocated as provided in subsection (6) of this section.

(8) The State Treasurer shall disburse the money in the Highway Trust Fund as directed by resolution of the commission. All disbursements from the fund shall be made upon warrants drawn by the Director of Administrative Services. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and the earnings, if any, credited to the fund.

**Source:** Laws 1969, c. 309, § 15, p. 1111; Laws 1971, LB 53, § 3; Laws 1979, LB 571, § 2; Laws 1981, LB 22, § 8; Laws 1983, LB 118, § 2; Laws 1984, LB 1089, § 1; Laws 1986, LB 599, § 11; Laws 1988, LB 632, § 9; Laws 1989, LB 258, § 3; Laws 1990, LB 602, § 1; Laws 1991, LB 627, § 4; Laws 1992, LB 319, § 1; Laws



**COUNTY HIGHWAY AND CITY STREET SUPERINTENDENTS ACT § 39-2310**

1994, LB 1066, § 25; Laws 1994, LB 1160, § 49; Laws 1995, LB 182, § 22; Laws 2002, LB 989, § 7; Laws 2002, Second Spec. Sess., LB 1, § 2; Laws 2003, LB 563, § 17; Laws 2004, LB 983, § 1; Laws 2004, LB 1144, § 3; Laws 2005, LB 274, § 228; Laws 2008, LB846, § 1; Laws 2011, LB170, § 1; Laws 2011, LB289, § 3; Laws 2017, LB339, § 159.  
Operative date July 1, 2017.

**Cross References**

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

**39-2224 Bonds; sale; proceeds; appropriated to Highway Cash Fund.**

(1) The proceeds of the sale of bonds authorized by subsection (1) of section 39-2223 are hereby appropriated to the Highway Cash Fund of the Department of Transportation, for the biennium ending June 30, 1977, for expenditure for the construction of highways.

(2) The proceeds of the sale of bonds authorized by subsection (2) of section 39-2223 are hereby appropriated to the Highway Cash Fund of the Department of Transportation for expenditure for highway construction, resurfacing, reconstruction, rehabilitation, and restoration and for the elimination or alleviation of cash-flow problems resulting from the receipt of federal funds.

**Source:** Laws 1969, c. 314, § 2, p. 1132; Laws 1975, LB 401, § 2; Laws 1988, LB 632, § 17; Laws 2017, LB339, § 160.  
Operative date July 1, 2017.

**ARTICLE 23**

**COUNTY HIGHWAY AND CITY STREET SUPERINTENDENTS ACT**

**Section**

39-2305. Board of examiners; office space; equipment; meetings.  
39-2310. Funds received under act; use.

**39-2305 Board of examiners; office space; equipment; meetings.**

The board of examiners shall be furnished necessary office space, furniture, equipment, stationery, and clerical assistance by the Department of Transportation. The board shall organize itself by selecting from among its members a chairperson and such other officers as it may find desirable. The board shall meet at such times at the headquarters of the department in Lincoln, Nebraska, as may be necessary for the administration of the County Highway and City Street Superintendents Act.

**Source:** Laws 1969, c. 144, § 5, p. 666; Laws 2003, LB 500, § 5; Laws 2017, LB339, § 161.  
Operative date July 1, 2017.

**39-2310 Funds received under act; use.**

All funds received under the County Highway and City Street Superintendents Act shall be remitted to the State Treasurer for credit to the Highway Cash Fund. Expenses of the members of the board of examiners as provided in

section 39-2304 shall be paid by the Department of Transportation from the Highway Cash Fund.

**Source:** Laws 1969, c. 144, § 10, p. 668; Laws 1971, LB 53, § 4; Laws 1972, LB 1496, § 1; Laws 2003, LB 500, § 13; Laws 2017, LB339, § 162.  
Operative date July 1, 2017.

## ARTICLE 25

### DISTRIBUTION TO POLITICAL SUBDIVISIONS

#### (a) ROADS

##### Section

- 39-2504. Incentive payment; reduction; when; consulting engineer; when; contracting with another political subdivision; payment.  
39-2505. Incentive payments; Department of Transportation; certify amount; State Treasurer; payment.  
39-2507. Allocation of funds for road purposes; factors used.  
39-2508. Allocation of funds for road purposes; Department of Transportation; State Treasurer; duties.

#### (b) STREETS

- 39-2514. Incentive payment; reduction; when; consulting engineer; when; contracting with another political subdivision.  
39-2515. Incentive payments; Department of Transportation, certify amount; State Treasurer; payment.  
39-2517. Allocation of funds for street purposes; factors used.  
39-2518. Allocation of funds for street purposes; Department of Transportation; State Treasurer; duties.

#### (a) ROADS

**39-2504 Incentive payment; reduction; when; consulting engineer; when; contracting with another political subdivision; payment.**

(1) A reduced incentive payment shall be made to any county or municipal county having in its employ either (a) a licensed county highway superintendent for only a portion of the calendar year preceding the year in which the payment is made or (b) two or more successive licensed county highway superintendents for the calendar year preceding the year in which the payment is made. Such reduced payment shall be in the proportion of the payment amounts listed in section 39-2503 as the number of full months each such licensed superintendent was employed is of twelve.

(2) Any county or municipal county that contracts for the services of a consulting engineer licensed under the County Highway and City Street Superintendents Act or any other person licensed under the act to perform the duties outlined in section 39-2502 rather than employing a licensed county highway superintendent shall be entitled to an incentive payment equal to two-thirds the payment amount provided in section 39-2503 or two-thirds of the reduced incentive payment provided in subsection (1) of this section, as determined by the Department of Transportation pursuant to section 39-2505.

(3) Any county or municipal county that contracts with another county or municipal county or with any city or village for the services of a licensed county highway superintendent as provided in section 39-2114 shall be entitled to the

incentive payment provided in section 39-2503 or the reduced incentive payment provided in subsection (1) of this section.

**Source:** Laws 1969, c. 315, § 4, p. 1134; Laws 1981, LB 51, § 2; Laws 2001, LB 142, § 41; Laws 2003, LB 500, § 17; Laws 2017, LB339, § 163.  
Operative date July 1, 2017.

**Cross References**

County Highway and City Street Superintendents Act, see section 39-2301.

**39-2505 Incentive payments; Department of Transportation; certify amount; State Treasurer; payment.**

The Department of Transportation shall, in January of each year commencing in 1970, determine and certify to the State Treasurer the amount of each incentive payment to be made under the provisions of sections 39-2501 to 39-2505. The State Treasurer shall, on or before February 15, make the incentive payments in accordance with such certification.

**Source:** Laws 1969, c. 315, § 5, p. 1134; Laws 2017, LB339, § 164.  
Operative date July 1, 2017.

**39-2507 Allocation of funds for road purposes; factors used.**

The following factors and weights shall be used in determining the amount to be allocated to each of the counties or municipal counties for road purposes each year:

- (1) Rural population of each county or municipal county, as determined by the most recent federal census, twenty percent;
- (2) Total population of each county or municipal county, as determined by the most recent federal census, ten percent;
- (3) Lineal feet of bridges twenty feet or more in length and all overpasses in each county or municipal county, as determined by the most recent inventory available within the Department of Transportation, ten percent, and for purposes of this subdivision a bridge or overpass located partly in one county or municipal county and partly in another shall be considered as being located one-half in each county or municipal county;
- (4) Total motor vehicle registrations, other than prorated commercial vehicles, in the rural areas of each county or municipal county, as determined from the most recent information available from the Department of Motor Vehicles, twenty percent;
- (5) Total motor vehicle registrations, other than prorated commercial vehicles, in each county or municipal county as determined from the most recent information available from the Department of Motor Vehicles, ten percent;
- (6) Total miles of county or municipal county and township roads within each county or municipal county, as determined by the most recent inventory available within the Department of Transportation, twenty percent; and
- (7) Value of farm products sold from each county or municipal county, as determined from the most recent federal Census of Agriculture, ten percent.

**Source:** Laws 1969, c. 315, § 7, p. 1135; Laws 2001, LB 142, § 42; Laws 2017, LB339, § 165.  
Operative date July 1, 2017.

**39-2508 Allocation of funds for road purposes; Department of Transportation; State Treasurer; duties.**

The Department of Transportation shall compute the amount allocated to each county or municipal county under each of the factors listed in section 39-2507 and shall then compute the total allocation to each such county or municipal county and transmit such information to the local governing board and the State Treasurer, who shall disburse funds accordingly.

**Source:** Laws 1969, c. 315, § 8, p. 1136; Laws 1985, LB 25, § 1; Laws 2001, LB 142, § 43; Laws 2017, LB339, § 166.  
Operative date July 1, 2017.

## (b) STREETS

**39-2514 Incentive payment; reduction; when; consulting engineer; when; contracting with another political subdivision.**

(1) A reduced incentive payment shall be made to any municipality or municipal county having in its employ either (a) a licensed city street superintendent for only a portion of the calendar year preceding the year in which the payment is made or (b) two or more successive licensed city street superintendents for the calendar year preceding the year in which the payment is made. Such reduced payment shall be in the proportion of the payment amounts listed in section 39-2513 as the number of full months each such licensed superintendent was employed is of twelve.

(2) Any municipality or municipal county that contracts for the services of a consulting engineer licensed under the County Highway and City Street Superintendents Act or any other person licensed under the act to perform the duties outlined in section 39-2512 rather than employing a licensed city street superintendent shall be entitled to an incentive payment as provided in section 39-2513 or to the reduced incentive payment provided in subsection (1) of this section, as determined by the Department of Transportation pursuant to section 39-2515.

(3) Any municipality or municipal county that contracts with another municipality, county, or municipal county for the services of a licensed city street superintendent as provided in section 39-2114 shall be entitled to the incentive payment provided in section 39-2513 or the reduced incentive payment provided in subsection (1) of this section.

**Source:** Laws 1969, c. 316, § 4, p. 1140; Laws 2001, LB 142, § 48; Laws 2003, LB 500, § 20; Laws 2017, LB339, § 167.  
Operative date July 1, 2017.

## Cross References

County Highway and City Street Superintendents Act, see section 39-2301.

**39-2515 Incentive payments; Department of Transportation, certify amount; State Treasurer; payment.**

The Department of Transportation shall, in January of each year commencing in 1970, determine and certify to the State Treasurer the amount of each incentive payment to be made under the provisions of sections 39-2511 to

39-2520. The State Treasurer shall, on or before February 15, make the incentive payments in accordance with such certification.

**Source:** Laws 1969, c. 316, § 5, p. 1140; Laws 2017, LB339, § 168.  
Operative date July 1, 2017.

**39-2517 Allocation of funds for street purposes; factors used.**

The following factors and weights shall be used in determining the amount to be allocated to each of the municipalities or municipal counties for street purposes each year:

- (1) Total population of each incorporated municipality or the urbanized area of a municipal county, as determined by the most recent federal census figures certified by the Tax Commissioner as provided in section 77-3,119, fifty percent;
- (2) Total motor vehicle registrations, other than prorated commercial vehicles, in each incorporated municipality or the urbanized area of a municipal county, as determined from the most recent information available from the Department of Motor Vehicles, thirty percent; and
- (3) Total number of miles of traffic lanes of streets in each incorporated municipality or the urbanized area of a municipal county, as determined by the most recent inventory available within the Department of Transportation, twenty percent.

**Source:** Laws 1969, c. 316, § 7, p. 1141; Laws 1993, LB 726, § 10; Laws 1994, LB 1127, § 6; Laws 2001, LB 142, § 49; Laws 2017, LB339, § 169.  
Operative date July 1, 2017.

**39-2518 Allocation of funds for street purposes; Department of Transportation; State Treasurer; duties.**

The Department of Transportation shall compute the amount allocated to each municipality or municipal county under the factors listed in section 39-2517 and shall then compute the total allocation to each such municipality or municipal county and transmit such information to the local governing body and the State Treasurer, who shall disburse funds accordingly.

**Source:** Laws 1969, c. 316, § 8, p. 1141; Laws 1986, LB 729, § 1; Laws 2001, LB 142, § 50; Laws 2017, LB339, § 170.  
Operative date July 1, 2017.

**ARTICLE 26  
JUNKYARDS**

Section  
39-2602. Terms, defined.

**39-2602 Terms, defined.**

For purposes of sections 39-2601 to 39-2612, unless the context otherwise requires:

- (1) Junk means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material;
- (2) Automobile graveyard means any establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling

wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts;

(3) Junkyard means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk or for the maintenance or operation of an automobile graveyard, and includes garbage dumps and sanitary fills;

(4) Highway Beautification Control System has the same meaning as in section 39-201.01;

(5) Scenic byway has the same meaning as in section 39-201.01;

(6) Main-traveled way means the traveled portion of an interstate or primary highway on which through traffic is carried and, in the case of a divided highway, the traveled portion of each of the separated roadways;

(7) Person means any natural person, partnership, limited liability company, association, corporation, or governmental subdivision; and

(8) Department means the Department of Transportation.

**Source:** Laws 1971, LB 398, § 2; Laws 1993, LB 121, § 214; Laws 1995, LB 264, § 25; Laws 2017, LB339, § 171.  
Operative date July 1, 2017.

**ARTICLE 27**

**BUILD NEBRASKA ACT**

Section  
39-2702. Terms, defined.

**39-2702 Terms, defined.**

For purposes of the Build Nebraska Act:

(1) Department means the Department of Transportation;

(2) Fund means the State Highway Capital Improvement Fund; and

(3) Surface transportation project means (a) expansion or reconstruction of a road or highway which is part of the state highway system, (b) expansion or reconstruction of a bridge which is part of the state highway system, or (c) construction of a new road, highway, or bridge which, if built, would be a part of the state highway system.

**Source:** Laws 2011, LB84, § 2; Laws 2017, LB339, § 172.  
Operative date July 1, 2017.

**ARTICLE 28**

**TRANSPORTATION INNOVATION ACT**

Section  
39-2802. Terms, defined.  
39-2806. Economic Opportunity Program; created.

**39-2802 Terms, defined.**

For purposes of the Transportation Innovation Act:

(1) Alternative technical concept means changes suggested by a qualified, eligible, short-listed design-builder to the department's basic configurations, project scope, design, or construction criteria;

- (2) Best value-based selection process means a process of selecting a design-builder using price, schedule, and qualifications for evaluation factors;
- (3) Construction manager means the legal entity which proposes to enter into a construction manager-general contractor contract pursuant to the act;
- (4) Construction manager-general contractor contract means a contract which is subject to a qualification-based selection process between the department and a construction manager to furnish preconstruction services during the design development phase of the project and, if an agreement can be reached which is satisfactory to the department, construction services for the construction phase of the project;
- (5) Construction services means activities associated with building the project;
- (6) Department means the Department of Transportation;
- (7) Design-build contract means a contract between the department and a design-builder which is subject to a best value-based selection process to furnish (a) architectural, engineering, and related design services and (b) labor, materials, supplies, equipment, and construction services;
- (8) Design-builder means the legal entity which proposes to enter into a design-build contract;
- (9) Multimodal transportation network means the interconnected system of highways, roads, streets, rail lines, river ports, and transit systems which facilitates the movement of people and freight to enhance Nebraska's economy;
- (10) Preconstruction services means all nonconstruction-related services that a construction manager performs in relation to the design of the project before execution of a contract for construction services. Preconstruction services includes, but is not limited to, cost estimating, value engineering studies, constructability reviews, delivery schedule assessments, and life-cycle analysis;
- (11) Project performance criteria means the performance requirements of the project suitable to allow the design-builder to make a proposal. Performance requirements shall include, but are not limited to, the following, if required by the project: Capacity, durability, standards, ingress and egress requirements, description of the site, surveys, soil and environmental information concerning the site, material quality standards, design and milestone dates, site development requirements, compliance with applicable law, and other criteria for the intended use of the project;
- (12) Proposal means an offer in response to a request for proposals (a) by a design-builder to enter into a design-build contract or (b) by a construction manager to enter into a construction manager-general contractor contract;
- (13) Qualification-based selection process means a process of selecting a construction manager based on qualifications;
- (14) Request for proposals means the documentation by which the department solicits proposals; and
- (15) Request for qualifications means the documentation or publication by which the department solicits qualifications.

**Source:** Laws 2016, LB960, § 2; Laws 2017, LB339, § 173.  
Operative date July 1, 2017.

**39-2806 Economic Opportunity Program; created.**

The Economic Opportunity Program is created. The Department of Transportation shall administer the program in consultation with the Department of Economic Development using funds from the Transportation Infrastructure Bank Fund, except that no more than twenty million dollars shall be expended for this program. The purpose of the program is to finance transportation improvements to attract and support new businesses and business expansions by successfully connecting such businesses to Nebraska's multimodal transportation network and to increase employment, create high-quality jobs, increase business investment, and revitalize rural and other distressed areas of the state. The Department of Transportation shall develop the program, including the application process, criteria for providing funding, matching requirements, and provisions for recapturing funds awarded for projects with unmet obligations, in consultation with statewide associations representing municipal and county officials, economic developers, and the Department of Economic Development. No project shall be approved through the Economic Opportunity Program without an economic impact analysis proving positive economic impact. The details of the program shall be presented to the Appropriations Committee and the Transportation and Telecommunications Committee of the Legislature on or before December 1, 2016.

**Source:** Laws 2016, LB960, § 6; Laws 2017, LB339, § 174.

Operative date July 1, 2017.

Termination date June 30, 2033.