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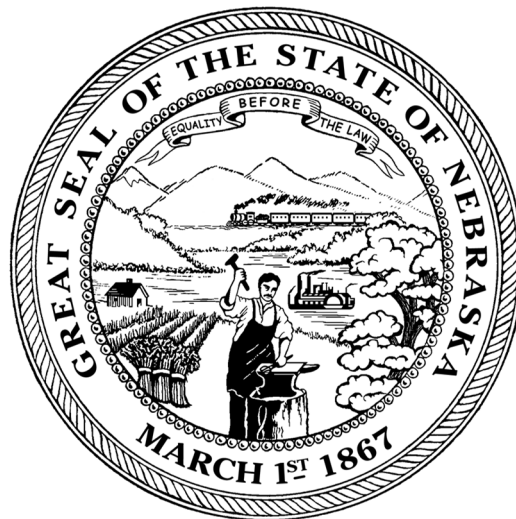


REVISED STATUTES OF NEBRASKA

2020 CUMULATIVE SUPPLEMENT

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Revisor of Statutes

For the benefit of the
State of Nebraska

CHAPTER 20 CIVIL RIGHTS

Article.

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ARTICLE 1 INDIVIDUAL RIGHTS

(b) PERSONS WITH DISABILITIES

Section

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(k) MOTHER BREAST-FEED CHILD

- 20-170. Mother; right to breast-feed child; school; provide facilities or accommodation for milk expression and storage.

(b) PERSONS WITH DISABILITIES

20-126 Statement of policy.

It is the policy of this state to encourage and enable blind, visually handicapped, deaf or hard of hearing, or physically disabled persons to participate fully in the social and economic life of the state and to engage in remunerative employment.

Source: Laws 1971, LB 496, § 1; R.S.Supp.,1971, § 43-633; Laws 1980, LB 932, § 1; Laws 1997, LB 254, § 2; Laws 2019, LB248, § 1.

20-128 Pedestrian using cane or service animal; driver of vehicle; duties; violation; damages.

In addition to the provisions of sections 28-1313 and 28-1314, the driver of a vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominantly white or metallic in color or using a service animal or a deaf or hard of hearing or physically disabled pedestrian who is using a service animal shall take all necessary precautions to avoid injury to such pedestrian, and any driver who fails to take such precautions shall be liable in damages for any injury caused such pedestrian. A totally or partially blind pedestrian not carrying such a cane or using a service animal or a deaf or hard of hearing or physically disabled pedestrian not using a service animal in any of the places, accommodations, or conveyances listed in section 20-127 shall have all of the rights and privileges conferred by law upon other persons, and the failure of a totally or partially blind pedestrian to carry such a cane or to use a service animal or the failure of a deaf or hard of hearing or physically disabled pedestrian to use a service animal in any such places, accommodations, or conveyances does not constitute and is not evidence of contributory negligence.

Source: Laws 1971, LB 496, § 3; R.S.Supp.,1971, § 43-635; Laws 1978, LB 748, § 2; Laws 1980, LB 932, § 3; Laws 1997, LB 254, § 4; Laws 2008, LB806, § 7; Laws 2019, LB248, § 2.

20-131.01 Full and equal enjoyment of housing accommodations; statement of policy.

It is the intent of the Legislature that blind persons, visually handicapped persons, deaf or hard of hearing persons, and other physically disabled persons shall be entitled to full and equal access to all housing accommodations offered for rent, lease, or compensation in this state.

Source: Laws 1975, LB 83, § 1; Laws 1980, LB 932, § 5; Laws 2019, LB248, § 3.

20-131.04 Service animal; access to housing accommodations; terms and conditions.

Every totally or partially blind person, deaf or hard of hearing person, or physically disabled person who has a service animal or obtains a service animal shall have full and equal access to all housing accommodations with such animal as prescribed in sections 20-131.01 to 20-131.04. Such person shall not be required to pay extra compensation for such animal. Such person shall be liable for any damage done to such premises by such animal. Any person who rents, leases, or provides housing accommodations for compensation to any totally or partially blind person, deaf or hard of hearing person, or physically disabled person who has or obtains a service animal shall not charge an additional deposit for such animal.

Source: Laws 1975, LB 83, § 4; Laws 1980, LB 932, § 6; Laws 1997, LB 254, § 7; Laws 2008, LB806, § 10; Laws 2019, LB248, § 4.

(f) CONSUMER INFORMATION

20-149 Consumer reporting agency; furnish information; duty; violation; penalty.

Any consumer reporting agency doing business in this state which is required to furnish information to a consumer, protected consumer as defined in section 8-2602, or representative as defined in section 8-2602 pursuant to 15 U.S.C.

1681g to 1681j as such sections existed on January 1, 2016, shall, upon the request of such consumer, protected consumer, or representative and at a reasonable charge, provide such consumer, protected consumer, or representative with a typewritten or photostatic copy of any consumer report, investigative report, or any credit report or other file information which it has on file or has prepared concerning such consumer or protected consumer, if such consumer, protected consumer, or representative has complied with 15 U.S.C. 1681h as such section existed on January 1, 2016. If such report uses a code to convey information about such consumer or protected consumer, such consumer, protected consumer, or representative shall be provided with a key to such code. For the purposes of this section, the definitions found in 15 U.S.C. 1681a as such section existed on January 1, 2016, shall apply. Any person violating this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1983, LB 197, § 1; Laws 2016, LB835, § 21.

Cross References

Credit Report Protection Act, see section 8-2601.

(g) INTERPRETERS

20-150 Legislative findings; licensed interpreters; qualified educational interpreters; legislative intent.

(1) The Legislature hereby finds and declares that it is the policy of the State of Nebraska to secure the rights of deaf and hard of hearing persons who cannot readily understand or communicate in spoken language and who consequently cannot equally participate in or benefit from proceedings, programs, and activities of state agencies and law enforcement personnel unless interpreters are available to assist them. State agencies and law enforcement personnel shall appoint licensed interpreters as provided in sections 20-150 to 20-159, except that courts and probation officials shall appoint interpreters as provided in sections 20-150 to 20-159 and 25-2401 to 25-2407 and public school districts and educational service units shall appoint qualified educational interpreters.

(2) The Commission for the Deaf and Hard of Hearing shall license and evaluate interpreters and video remote interpreting providers pursuant to section 20-156. The commission shall (a) develop licensed interpreter guidelines for distribution, (b) develop training to implement the guidelines, (c) adopt and promulgate rules and regulations to implement the guidelines and requirements for licensed interpreters, and (d) develop a roster of interpreters as required in section 71-4728.

(3) It is the intent of the Legislature to assure that qualified educational interpreters are provided to deaf and hard of hearing children in kindergarten-through-grade-twelve public school districts and educational service units. The State Department of Education shall adopt and promulgate rules and regulations to implement the guidelines and requirements for qualified educational interpreters, and such rules and regulations shall apply to all qualified educational interpreters.

Source: Laws 1987, LB 376, § 1; Laws 1997, LB 851, § 1; Laws 2002, LB 22, § 1; Laws 2006, LB 87, § 1; Laws 2015, LB287, § 1.

Cross References

Legal proceedings, use of interpreters, see section 25-2401 et seq.

20-151 Terms, defined.

For purposes of sections 20-150 to 20-159, unless the context otherwise requires:

(1) Appointing authority means the state agency or law enforcement personnel required to provide a licensed interpreter pursuant to sections 20-150 to 20-159;

(2) Auxiliary aid includes, but is not limited to, sign language interpreters, oral interpreters, tactile interpreters, other interpreters, notetakers, transcription services, written materials, assistive listening devices, assisted listening systems, videotext displays, and other visual delivery systems;

(3) Deaf or hard of hearing person means a person whose hearing impairment, with or without amplification, is so severe that he or she may have difficulty in auditorily processing spoken language without the use of an interpreter or a person with a fluctuating or permanent hearing loss which may adversely affect the ability to understand spoken language without the use of an interpreter or other auxiliary aid;

(4) Intermediary interpreter means any person, including any deaf or hard of hearing person, who is able to assist in providing an accurate interpretation between spoken English and sign language or between variants of sign language in order to facilitate communication between a deaf or hard of hearing person and an interpreter;

(5) Licensed interpreter means a person who demonstrates proficiencies in interpretation or transliteration as required by the rules and regulations adopted and promulgated by the Commission for the Deaf and Hard of Hearing pursuant to subsection (2) of section 20-150 and who holds a license issued by the commission pursuant to section 20-156. Licensed interpreter includes a licensed video remote interpreting provider;

(6) Oral interpreter means a person who interprets language through facial expression, body language, and mouthing;

(7) State agency means any state entity which receives appropriations from the Legislature and includes the Legislature, legislative committees, executive agencies, courts, and probation officials but does not include political subdivisions;

(8) Tactile interpreter means a person who interprets for a deaf-blind person. The degree of deafness and blindness will determine the mode of communication to be used for each person;

(9) Video remote interpreting services means the use of videoconferencing technology with the intent to provide effective interpreting services; and

(10) Video remote interpreting provider means a person or an entity licensed to provide video remote interpreting services.

Source: Laws 1987, LB 376, § 2; Laws 1997, LB 851, § 2; Laws 2002, LB 22, § 2; Laws 2006, LB 87, § 2; Laws 2015, LB287, § 2.

20-156 Commission; interpreters; video remote interpreting providers; licensure; requirements; fees; roster; disciplinary actions; review; injunctions authorized.

(1) The Commission for the Deaf and Hard of Hearing shall license and evaluate licensed interpreters. The commission shall create the Interpreter Review Board pursuant to section 71-4728.05 to set policies, standards, and procedures for evaluation and licensing of interpreters. The commission may recognize evaluation and certification programs as a means to carry out the duty of evaluating interpreters' skills. The commission may define and establish different levels or types of licensure to reflect different levels of proficiency and different specialty areas.

(2) The commission shall establish and charge reasonable fees for licensure of interpreters and video remote interpreting providers, including applications, initial competency assessments, renewals, modifications, record keeping, approval, conduct, and sponsorship of continuing education, and assessment of continuing competency pursuant to sections 20-150 to 20-159. All fees collected pursuant to this section by the commission shall be remitted to the State Treasurer for credit to the Commission for the Deaf and Hard of Hearing Fund. Such fees shall be disbursed for payment of expenses related to this section.

(3) The commission shall prepare and maintain a roster of licensed interpreters as provided by section 71-4728. Nothing in sections 20-150 to 20-159 shall be construed to prevent any appointing authority from contracting with a licensed interpreter on a full-time employment basis.

(4) The commission may deny, refuse to renew, limit, revoke, suspend, or take other disciplinary actions against a license when the applicant or licensee is found to have violated any provision of sections 20-150 to 20-159 or 71-4728 to 71-4732, or any rule or regulation of the commission adopted and promulgated pursuant to such sections, including rules and regulations governing unprofessional conduct. The Interpreter Review Board shall investigate complaints regarding the use of interpreters by any appointing authority, or the providing of interpreting services by any interpreter, alleged to be in violation of sections 20-150 to 20-159 or rules and regulations of the commission. The commission shall notify in writing an appointing authority determined to be employing interpreters in violation of sections 20-150 to 20-159 or rules and regulations of the commission and shall monitor such appointing authority to prevent future violations.

(5) Any decision of the commission pursuant to this section shall be subject to review according to the Administrative Procedure Act.

(6) Any person or entity providing interpreting services pursuant to sections 20-150 to 20-159 without a license issued pursuant to this section may be restrained by temporary and permanent injunctions and on and after January 1, 2016, shall be subject to a civil penalty as provided in section 20-156.01.

Source: Laws 1987, LB 376, § 7; Laws 1997, LB 752, § 78; Laws 1997, LB 851, § 8; Laws 2002, LB 22, § 6; Laws 2006, LB 87, § 3; Laws 2010, LB706, § 1; Laws 2015, LB287, § 3.

Cross References

Administrative Procedure Act, see section 84-920.

20-156.01 Prohibited acts without license; licensure; application; civil penalty; commission; powers; acts authorized.

(1) Except as otherwise provided in this section, no person or entity shall (a) practice as an interpreter for the deaf or hard of hearing for compensation, (b)

hold himself, herself, or itself out as a licensed interpreter for the deaf or hard of hearing, (c) provide video remote interpreting services, (d) use the title Licensed Interpreter for the Deaf or Licensed Transliterater for the Deaf, or (e) use any other title or abbreviation to indicate that the person or entity is a licensed interpreter unless licensed pursuant to section 20-156.

(2) A person rostered as a qualified interpreter on or before August 30, 2015, may be issued a license pursuant to section 20-156 upon filing an application and paying the fee established by the Commission for the Deaf and Hard of Hearing. Such person shall meet all applicable licensure requirements of sections 20-150 to 20-159 on or before January 1, 2016.

(3)(a) On and after January 1, 2016, any person or entity who practices, offers to practice, or attempts to practice as an interpreter for the deaf or hard of hearing for compensation or as a video remote interpreting provider or holds himself, herself, or itself out as a licensed interpreter without being licensed pursuant to section 20-156 or exempt under this section shall, in addition to any other penalty provided by law, pay a civil penalty to the commission in an amount not to exceed five hundred dollars for each offense as determined by the commission. The civil penalty shall be assessed by the commission after a hearing is held in accordance with section 20-156 and shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(b) The civil penalty shall be paid within sixty days after the date of the order imposing the civil penalty. The order shall constitute a judgment and may be filed and executed in the same manner as any judgment from any court of record.

(c) The commission may investigate any actual, alleged, or suspected unlicensed activity.

(4) An unlicensed person or entity providing interpreting services is not in violation of the licensure requirements of this section if the person or entity is:

(a) Providing interpreting services as part of a religious service;

(b) Notwithstanding other state or federal laws or rules regarding emergency treatment, providing interpreting services, until the services of a licensed interpreter can be obtained if there is continued need for an interpreter, in an emergency situation involving health care in which the patient or his or her representative and a health care provider or health care professional agree that the delay necessary to obtain a licensed interpreter is likely to cause injury or loss to the patient;

(c) Currently enrolled in a course of study leading to a certificate or degree in interpreting if such person is under the direct supervision of a licensed interpreter, engages only in activities and services that constitute a part of such course of study, and clearly designates himself or herself as a student, a trainee, or an intern;

(d) Working as an educational interpreter in compliance with rules and regulations adopted and promulgated by the State Department of Education or working for other purposes in a public school or an educational service unit;

(e) Holding either a certificate or a license as an interpreter in his or her state of residence which he or she has submitted to the commission for approval and either (i) providing interpreting services in Nebraska for a period of time not to exceed fourteen days in a calendar year or (ii) providing interpreting services

by telecommunicating, or other use of technological means of communication;
or

(f) Employed by or under contract with a person or an entity which is a licensed video remote interpreting provider in this state.

Source: Laws 2015, LB287, § 4.

20-159 Fees authorized.

A licensed interpreter appointed pursuant to sections 20-150 to 20-159 is entitled to a fee for professional services and other relevant expenses as agreed between the licensed interpreter and the contracting entity. When the licensed interpreter is appointed by a court, the fee shall be paid out of the General Fund with funds appropriated to the Supreme Court for that purpose or from funds, including grant money, made available to the Supreme Court for such purpose. When the licensed interpreter is appointed by an appointing authority other than a court, the fee shall be paid out of funds available to the governing body of the appointing authority.

Source: Laws 1987, LB 376, § 10; Laws 1997, LB 851, § 10; Laws 1999, LB 54, § 2; Laws 2002, LB 22, § 7; Laws 2011, LB669, § 1; Laws 2015, LB287, § 5.

(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.

ARTICLE 5

RACIAL PROFILING

Section

20-501. Racial profiling; legislative intent.

20-502. Racial profiling prohibited.

20-504. Written racial profiling prevention policy; contents; Nebraska Commission on Law Enforcement and Criminal Justice; powers; duties; motor vehicle stop; record of information; failure to comply, effect; immunity; law enforcement officer, prosecutor, defense attorney, or probation officer; report required.

20-505. Forms authorized.

20-506. Racial Profiling Advisory Committee; created; members; duties.

20-501 Racial profiling; legislative intent.

Racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society. It is abhorrent and cannot be tolerated. An individual who has been detained or whose vehicle has been stopped by the police for no reason other than the color of his or her skin or his or her apparent nationality or ethnicity is the victim of a discriminatory practice.

Source: Laws 2001, LB 593, § 1; Laws 2013, LB99, § 1.

20-502 Racial profiling prohibited.

(1) No member of the Nebraska State Patrol or a county sheriff's office, officer of a city or village police department, or member of any other law enforcement agency in this state shall engage in racial profiling. The disparate treatment of an individual who has been detained or whose motor vehicle has been stopped by a law enforcement officer is inconsistent with this policy.

(2) Racial profiling shall not be used to justify the detention of an individual or to conduct a motor vehicle stop.

Source: Laws 2001, LB 593, § 2; Laws 2013, LB99, § 2.

20-504 Written racial profiling prevention policy; contents; Nebraska Commission on Law Enforcement and Criminal Justice; powers; duties; motor vehicle stop; record of information; failure to comply, effect; immunity; law enforcement officer, prosecutor, defense attorney, or probation officer; report required.

(1) The Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall adopt and provide a copy to the Nebraska Commission on Law Enforcement and Criminal Justice of a written policy that prohibits the detention of any person or a motor vehicle stop when such action is motivated by racial profiling. Such racial profiling prevention policy shall include definitions consistent with section 20-503 and one or more internal methods of prevention and enforcement, including, but not limited to:

- (a) Internal affairs investigation;
- (b) Preventative measures including extra training at the Nebraska Law Enforcement Training Center focused on avoidance of apparent or actual racial profiling;
- (c) Anti-bias and implicit bias training and testing designed to minimize apparent or actual racial profiling;
- (d) Early intervention with any particular personnel determined by the administration of the agency to have committed, participated in, condoned, or attempted to cover up any instance of racial profiling; and
- (e) Disciplinary measures or other formal or informal methods of prevention and enforcement.

None of the preventative or enforcement measures shall be implemented contrary to the collective-bargaining agreement provisions or personnel rules under which the member or officer in question is employed.

(2) The Nebraska Commission on Law Enforcement and Criminal Justice may develop and distribute a suggested model written racial profiling preven-

tion policy for use by law enforcement agencies, but the commission shall not mandate the adoption of the model policy except for any particular law enforcement agency which fails to timely create and provide to the commission a policy for the agency in conformance with the minimum standards set forth in this section.

(3) With respect to a motor vehicle stop, on and after January 1, 2002, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall record and retain the following information using the form developed and promulgated pursuant to section 20-505:

(a) The number of motor vehicle stops;

(b) The characteristics of race or ethnicity of the person stopped. The identification of such characteristics shall be based on the observation and perception of the law enforcement officer responsible for reporting the motor vehicle stop and the information shall not be required to be provided by the person stopped;

(c) If the stop is for a law violation, the nature of the alleged law violation that resulted in the motor vehicle stop;

(d) Whether a warning or citation was issued, an arrest made, or a search conducted as a result of the motor vehicle stop. Search does not include a search incident to arrest or an inventory search; and

(e) Any additional information that the Nebraska State Patrol, the county sheriffs, all city and village police departments, or any other law enforcement agency in this state, as the case may be, deems appropriate.

(4) The Nebraska Commission on Law Enforcement and Criminal Justice may develop a uniform system for receiving allegations of racial profiling. The Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall provide to the commission (a) a copy of each allegation of racial profiling received and (b) written notification of the review and disposition of such allegation. No information revealing the identity of the law enforcement officer involved in the stop shall be used, transmitted, or disclosed in violation of any collective-bargaining agreement provision or personnel rule under which such law enforcement officer is employed. No information revealing the identity of the complainant shall be used, transmitted, or disclosed in the form alleging racial profiling.

(5) Any law enforcement officer who in good faith records information on a motor vehicle stop pursuant to this section shall not be held civilly liable for the act of recording such information unless the law enforcement officer's conduct was unreasonable or reckless or in some way contrary to law.

(6) On or before October 1, 2002, and annually thereafter, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and all other law enforcement agencies in this state shall provide to the Nebraska Commission on Law Enforcement and Criminal Justice, in such form as the commission prescribes, a summary report of the information recorded pursuant to subsection (3) of this section.

(7) The Nebraska Commission on Law Enforcement and Criminal Justice shall, within the limits of its existing appropriations, including any grant funds which the commission is awarded for such purpose, provide for an annual review and analysis of the prevalence and disposition of motor vehicle stops

based on racial profiling and allegations of racial profiling involved in other detentions reported pursuant to this section. After the review and analysis, the commission may, when it deems warranted, inquire into and study individual law enforcement agency circumstances in which the raw data collected and analyzed raises at least some issue or appearance of possible racial profiling. The commission may make recommendations to any such law enforcement agency for the purpose of improving measures to prevent racial profiling or the appearance of racial profiling. The results of such review, analysis, inquiry, and study and any recommendations by the commission to any law enforcement agency shall be reported annually to the Governor and the Legislature. The report submitted to the Legislature shall be submitted electronically.

(8) Any law enforcement officer, prosecutor, defense attorney, or probation officer, unless restricted by privilege, who becomes aware of incidents of racial profiling by a law enforcement agency, shall report such incidents to the Nebraska Commission on Law Enforcement and Criminal Justice within thirty days after becoming aware of such practice.

(9) If the Nebraska State Patrol, a county sheriff, a city and village police department, or any other law enforcement agency in this state fails, in a material manner, to record or retain information as required by subsection (3) of this section or to provide the information to the Nebraska Commission on Law Enforcement and Criminal Justice as required by subsection (6) of this section, such agency shall be ineligible to receive loans, grants, funds, or donations administered by the commission until the commission determines that such material failure has been corrected.

Source: Laws 2001, LB 593, § 4; Laws 2004, LB 1162, § 2; Laws 2006, LB 1113, § 19; Laws 2010, LB746, § 1; Laws 2012, LB782, § 21; Laws 2013, LB99, § 3; Laws 2020, LB924, § 1.
Effective date August 7, 2020.

20-505 Forms authorized.

On or before January 1, 2002, the Nebraska Commission on Law Enforcement and Criminal Justice, the Superintendent of Law Enforcement and Public Safety, the Attorney General, and the State Court Administrator may adopt and promulgate (1) a form, in printed or electronic format, to be used by a law enforcement officer when making a motor vehicle stop to record personal identifying information about the operator of such motor vehicle, the location of the stop, the reason for the stop, and any other information that is required to be recorded pursuant to subsection (3) of section 20-504 and (2) a form, in printed or electronic format, to be used to report an allegation of racial profiling by a law enforcement officer.

Source: Laws 2001, LB 593, § 5; Laws 2013, LB99, § 4.

20-506 Racial Profiling Advisory Committee; created; members; duties.

(1) The Racial Profiling Advisory Committee is created.

(2)(a) The committee shall consist of:

(i) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice, who also shall be the chairperson of the committee;

(ii) The Superintendent of Law Enforcement and Public Safety or his or her designee;

(iii) The director of the Commission on Latino-Americans or his or her designee; and

(iv) The executive director of the Commission on Indian Affairs or his or her designee.

(b) The committee shall also consist of the following persons, each appointed by the Governor from a list of five names submitted to the Governor for each position:

(i) A representative of the Fraternal Order of Police;

(ii) A representative of the Nebraska County Sheriffs Association;

(iii) A representative of the Police Officers Association of Nebraska;

(iv) A representative of the American Civil Liberties Union of Nebraska;

(v) A representative of the AFL-CIO;

(vi) A representative of the Police Chiefs Association of Nebraska;

(vii) A representative of the Nebraska branches of the National Association for the Advancement of Colored People; and

(viii) A representative of the Nebraska State Bar Association appointed by the Governor from a list of attorneys submitted by the executive council of the Nebraska State Bar Association.

(3) The committee shall meet and organize within thirty days after the appointment of the members. The committee shall meet semiannually at a time and place to be fixed by the committee. Special meetings may be called by the chairperson or at the request of two or more members of the committee.

(4) The committee shall advise the commission and its executive director in the conduct of their duties regarding (a) the completeness and acceptability of written racial profiling prevention policies submitted by individual law enforcement agencies as required by subsection (1) of section 20-504, (b) the collection of data by law enforcement agencies, any needed additional data, and any needed additional analysis, investigation, or inquiry as to the data provided pursuant to subsection (3) of section 20-504, (c) the review, analysis, inquiry, study, and recommendations required pursuant to subsection (7) of section 20-504, including an analysis of the review, analysis, inquiry, study, and recommendations, and (d) policy recommendations with respect to the prevention of racial profiling and the need, if any, for enforcement by the Department of Justice of the prohibitions found in section 20-502.

Source: Laws 2004, LB 1162, § 5; Laws 2010, LB746, § 2; Laws 2013, LB99, § 5.

ARTICLE 6

AMERICAN SIGN LANGUAGE

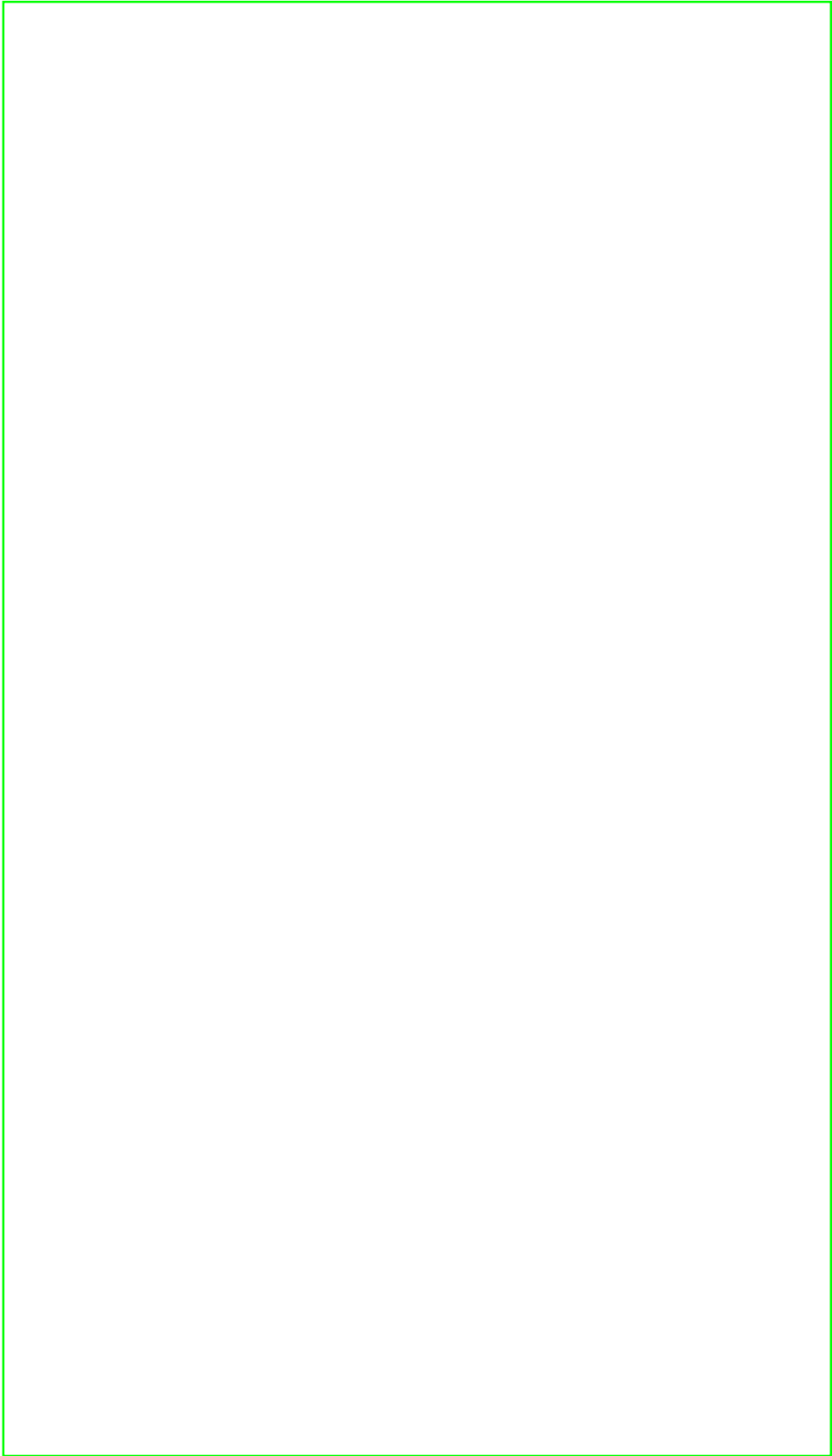
Section
20-601. Legislative declaration.

20-601 Legislative declaration.

The Legislature hereby declares that American Sign Language is recognized by the State of Nebraska as a distinct and separate language.

Source: Laws 2020, LB965, § 1.

Effective date November 14, 2020.



CHAPTER 21

CORPORATIONS AND OTHER COMPANIES

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ARTICLE 1**NEBRASKA UNIFORM LIMITED LIABILITY COMPANY ACT****(a) GENERAL PROVISIONS**

Section

- 21-101. Act, how cited.
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- 21-114. Change of designated office or agent for service of process; change of address.

(b) FORMATION; CERTIFICATE OF ORGANIZATION AND OTHER FILINGS

- 21-125. Biennial report.

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- 21-147. Events causing dissolution; rescission; procedure.
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(k) PROFESSIONAL SERVICES AND CERTIFICATE OF REGISTRATION

- 21-186. Certificate of registration; application; contents; display; electronic records; use; license verification; Secretary of State; duties.

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- 21-192. Fees.

(a) GENERAL PROVISIONS**21-101 Act, how cited.**

(RULLCA 101) Sections 21-101 to 21-197 and 21-501 to 21-542 shall be known and may be cited as the Nebraska Uniform Limited Liability Company Act.

Source: Laws 2010, LB888, § 1; Laws 2018, LB1121, § 1.
Operative date January 1, 2021.

21-104 Nature, purpose and duration of limited liability company; classification for tax purposes.

(RULLCA 104) (a) A limited liability company is an entity distinct from its members.

(b) A limited liability company may have any lawful purpose, except that a limited liability company may not operate as an insurer as defined in section 44-103.

(c) A limited liability company has perpetual duration.

(d) A limited liability company shall be classified for state income tax purposes in the same manner as it is classified for federal income tax purposes.

Source: Laws 2010, LB888, § 4; Laws 2016, LB758, § 1.

21-114 Change of designated office or agent for service of process; change of address.

(RULLCA 114) (a) A limited liability company or foreign limited liability company may change its designated office, its agent for service of process, or the address of its agent for service of process by delivering to the Secretary of State for filing a statement of change containing:

- (1) the name of the company;
- (2) the street and mailing addresses of its current designated office;
- (3) if the current designated office is to be changed, the street and mailing addresses of the new designated office;
- (4) the name and street and mailing addresses and post office box number, if any, of its current agent for service of process; and
- (5) if the current agent for service of process or an address of the agent is to be changed, the new information.

(b) Subject to subsection (c) of section 21-121, a statement of change is effective when filed by the Secretary of State.

(c) An agent for service of process may change the agent's street and mailing addresses and post office box number, if any, for any limited liability company or foreign limited liability company for which the agent is designated by notifying the limited liability company or foreign limited liability company in writing of the change containing the new information, and by delivering to the Secretary of State for filing a statement of change of address for an agent for service of process which complies with the requirements of subdivisions (a)(1), (4), and (5) of this section and states that the limited liability company or foreign limited liability company has been notified of the change.

Source: Laws 2010, LB888, § 14; Laws 2014, LB753, § 1.

(b) FORMATION; CERTIFICATE OF ORGANIZATION
AND OTHER FILINGS

21-125 Biennial report.

(RULLCA 209) (a) Each odd-numbered year, a limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the Secretary of State for filing a biennial report that states:

- (1) the name of the company;
- (2) the street and mailing addresses of the company's designated office and the name and street and mailing addresses and post office box number, if any, of its agent for service of process in this state;
- (3) the street and mailing addresses of its principal office; and
- (4) in the case of a foreign limited liability company, the state or other jurisdiction under whose law the company is formed and any alternate name adopted under subsection (a) of section 21-159.

(b) Information in a biennial report under this section must be current as of the date the report is delivered to the Secretary of State for filing.

(c) The first biennial report under this section must be delivered to the Secretary of State between January 1 and April 1 of the odd-numbered year following the calendar year in which a limited liability company was formed or a foreign limited liability company was authorized to transact business. A report must be delivered to the Secretary of State between January 1 and April 1 of each subsequent odd-numbered calendar year.

(d) If a biennial report under this section does not contain the information required in subsection (a) of this section, the Secretary of State shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (a) of this section and delivered to the Secretary of State within thirty days after the effective date of the notice, it is timely delivered.

(e) A correction or an amendment to the biennial report may be delivered to the Secretary of State for filing at any time.

Source: Laws 2010, LB888, § 25; Laws 2014, LB774, § 2.

(g) DISSOLUTION AND WINDING UP

21-147 Events causing dissolution; rescission; procedure.

(RULLCA 701) (a) A limited liability company is dissolved, and its activities must be wound up, upon the occurrence of any of the following:

(1) an event or circumstance that the operating agreement states causes dissolution;

(2) the consent of all the members;

(3) the passage of ninety consecutive days during which the company has no members;

(4) on application by a member, the entry by the district court of an order dissolving the company on the grounds that:

(A) the conduct of all or substantially all of the company's activities is unlawful; or

(B) it is not reasonably practicable to carry on the company's activities in conformity with the certificate of organization and the operating agreement; or

(5) on application by a member, the entry by the district court of an order dissolving the company on the grounds that the managers or those members in control of the company:

(A) have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(B) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

(b) In a proceeding brought under subdivision (a)(5) of this section, the court may order a remedy other than dissolution.

(c) A limited liability company may rescind its dissolution, unless a statement of termination applicable to the company has become effective, the district court has entered an order under subdivision (a)(4) of this section dissolving the

company, or the Secretary of State has administratively dissolved the company under section 21-151.

(d) Rescinding dissolution under this section requires:

(1) the consent of all the members; and

(2) if the limited liability company has delivered to the Secretary of State for filing a statement of dissolution under section 21-148 and:

(A) the statement has not become effective, delivery to the Secretary of State for filing of a statement of withdrawal under section 21-121 applicable to the statement of dissolution; or

(B) if the statement of dissolution has become effective, delivery to the Secretary of State for filing of a statement of rescission stating the name of the company and that dissolution has been rescinded under this section.

(e) If a limited liability company rescinds its dissolution:

(1) the company resumes carrying on its activities and affairs as if dissolution had never occurred;

(2) subject to subdivision (e)(3) of this section, any liability incurred by the company after the dissolution and before the rescission has become effective is determined as if dissolution had never occurred; and

(3) the rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

Source: Laws 2010, LB888, § 47; Laws 2019, LB78, § 1.

21-152 Reinstatement following administrative dissolution.

(RULLCA 706) (a) A limited liability company that has been administratively dissolved may apply to the Secretary of State for reinstatement within five years after the effective date of its dissolution. The application must be delivered to the Secretary of State for filing and state:

(1) the name of the company and the effective date of its dissolution;

(2) that the grounds for dissolution did not exist or have been eliminated; and

(3) that the company's name satisfies the requirements of section 21-108.

(b) If the Secretary of State determines that an application under subsection (a) of this section contains the required information and that the information is correct, the Secretary of State shall prepare a declaration of reinstatement that states this determination, sign and file the original of the declaration of reinstatement, and serve the limited liability company with a copy.

(c) A limited liability company that has been administratively dissolved for more than five years may apply to the Secretary of State for late reinstatement. The application must be delivered to the Secretary of State for filing, along with the fee set forth in section 21-192, and state:

(1) The name of the company and the effective date of its dissolution;

(2) That the grounds for dissolution did not exist or have been eliminated;

(3) That the company's name satisfies the requirements of section 21-108;

(4) That a legitimate reason exists for reinstatement and what such legitimate reason is; and

(5) That such reinstatement does not constitute fraud on the public.

(d) If the Secretary of State determines that an application under subsection (c) of this section contains the required information and that the information is correct, the Secretary of State shall prepare a declaration of reinstatement that states this determination, sign and file the original of the declaration of reinstatement, and serve the limited liability company with a copy.

(e) When a reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company may resume its activities as if the dissolution had not occurred.

Source: Laws 2010, LB888, § 52; Laws 2012, LB854, § 1; Laws 2015, LB279, § 1.

(k) PROFESSIONAL SERVICES AND CERTIFICATE OF REGISTRATION

21-186 Certificate of registration; application; contents; display; electronic records; use; license verification; Secretary of State; duties.

(1)(a) An application for issuance of a certificate of registration shall be made by the limited liability company to the regulatory body in writing and shall contain the names of all members, managers, professional employees, and agents of the limited liability company who are required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business, the street address at which the applicant proposes to render a professional service, and such other information as may be required by the regulatory body. If it appears to the regulatory body that each member, manager, professional employee, and agent of the applicant required by law to be licensed is licensed or otherwise authorized to practice the profession for which the applicant is organized to do business and that each member, manager, professional employee, or agent required by law to be licensed or otherwise authorized to practice the profession for which the applicant is organized to do business is not otherwise disqualified from rendering the professional service of the applicant, such regulatory body shall issue a certificate in duplicate upon a form bearing its date of issuance and prescribed by such regulatory body certifying that the proposed or existing limited liability company complies with the provisions of the Nebraska Uniform Limited Liability Company Act and of the applicable rules and regulations of the regulatory body. Each applicant for such certificate shall pay the regulatory body a fee of twenty-five dollars for the issuance of the certificate.

(b) One copy of a certificate of registration issued pursuant to this subsection shall be prominently displayed to public view upon the premises of the principal place of business of the limited liability company, and, except as provided in subsection (2) of this section, one copy shall be delivered for filing to the Secretary of State who shall charge a fee as specified in section 21-192 for filing the same. The certificate shall be delivered to the Secretary of State for filing with the certificate of organization. A certificate of registration bearing an issuance date more than twelve months old shall not be eligible for filing by the Secretary of State.

(2) When licensing records of regulatory bodies are electronically accessible to the Secretary of State, the Secretary of State shall access the records. The access of the records shall be made in lieu of a certificate of registration being prepared and issued by the regulatory body for delivery to the Secretary of State for filing. The limited liability company shall deliver to the Secretary of

State for filing an application setting forth the names of all members, managers, professional employees, and agents of such limited liability company who are required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business as of the last day of the month preceding the date of application and shall deliver to the Secretary of State for filing an annual update thereafter. The application shall be completed on a form prescribed by the Secretary of State and shall contain such other information as the Secretary of State may require. The application shall be accompanied by a license verification fee as specified in section 21-192.

The Secretary of State shall verify that all members, managers, professional employees, and agents who are required by law to do so are duly licensed or otherwise legally authorized to render the professional service for which the applicant is organized to do business or ancillary service as those which the limited liability company renders through electronic accessing of the regulatory body's records. If any member, manager, professional employee, or agent who is required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business is not licensed or otherwise legally authorized to render the professional service for which the limited liability company is organized to do business, the limited liability company shall be suspended. The suspension shall remain in effect and a biennial report shall not be delivered to the Secretary of State for filing or filed by the Secretary of State until the limited liability company attests in writing that all members, managers, professional employees, or agents who are required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business are duly licensed or otherwise legally authorized to render the professional service for which the limited liability company is organized to do business and that information is verified by the Secretary of State or all unlicensed or unauthorized members, managers, professional employees, or agents are no longer members, managers, professional employees, or agents of the limited liability company.

Source: Laws 2010, LB888, § 86; Laws 2020, LB910, § 3.
Operative date July 1, 2021.

(l) FEES

21-192 Fees.

(1) The filing fee for all filings under the Nebraska Uniform Limited Liability Company Act, including amendments and name reservation, shall be thirty dollars if the filing is submitted in writing and twenty-five dollars if the filing is submitted electronically pursuant to section 84-511, except that:

(a) The filing fee for filing a certificate of organization under section 21-117 and for filing an application for a certificate of authority to transact business in this state as a foreign limited liability company under section 21-156 shall be one hundred ten dollars if the filing is submitted in writing and one hundred dollars if the filing is submitted electronically pursuant to section 84-511, and ten dollars for a certificate; and

(b) The filing fee for filing a protected-series designation under section 21-509 shall be one hundred ten dollars if the filing is submitted in writing and one

hundred dollars if the filing is submitted electronically pursuant to section 84-511, for each protected series stated, and ten dollars for a certificate and the filing fee for an application for a certificate of authority to do business in this state as a foreign protected series under section 21-537 shall be one hundred ten dollars if the filing is submitted in writing and one hundred dollars if the filing is submitted electronically pursuant to section 84-511, and ten dollars for a certificate.

(2) The filing fee for filing a statement of change of address for an agent for service of process under section 21-114 shall be thirty dollars if the filing is submitted in writing and twenty-five dollars if the filing is submitted electronically pursuant to section 84-511 for each limited liability company or foreign limited liability company for which the agent is designated.

(3) The filing fee for filing a statement of designation change under section 21-510 shall be thirty dollars if the filing is submitted in writing and twenty-five dollars if the filing is submitted electronically pursuant to section 84-511 for each of the series limited liability company's protected series.

(4) The filing fee for the filing of a biennial report under section 21-514 shall be thirty dollars if the filing is submitted in writing and twenty-five dollars if the filing is submitted electronically pursuant to section 84-511 for the series limited liability company and thirty dollars if the filing is submitted in writing and twenty-five dollars if the filing is submitted electronically pursuant to section 84-511 for each of the series limited liability company's protected series.

(5) The fee for an application for reinstatement more than five years after the effective date of an administrative dissolution shall be five hundred dollars.

(6) The fee for filing a certificate of registration pursuant to section 21-186 shall be thirty dollars if the certificate is submitted in writing and twenty-five dollars if the certificate is submitted electronically pursuant to section 84-511. In lieu of filing such certificate, the fee for application for electronic access to records pursuant to section 21-186 is fifty-five dollars if submitted in writing or fifty dollars if submitted electronically pursuant to section 84-511.

(7) A fee of one dollar per page plus ten dollars per certificate shall be paid for a certified copy of any document on file under the act.

(8) The fees for filings under the act shall be paid to the Secretary of State. The Secretary of State shall remit the fees to the State Treasurer. The State Treasurer shall credit sixty percent of the fees to the General Fund and forty percent of the fees to the Secretary of State Cash Fund.

Source: Laws 2010, LB888, § 92; Laws 2014, LB753, § 2; Laws 2015, LB279, § 2; Laws 2019, LB78, § 2; Laws 2020, LB910, § 4.
Operative date July 1, 2021.

ARTICLE 2

NEBRASKA MODEL BUSINESS CORPORATION ACT

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NEBRASKA MODEL BUSINESS CORPORATION ACT

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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; Laws 2020, LB808, § 2.

Operative date July 1, 2021.

21-202 Reservation of power to amend or repeal.

(MBCA 1.02) The Legislature has power to amend or repeal all or part of the Nebraska Model Business Corporation Act at any time and all domestic and foreign corporations subject to the act are governed by the amendment or repeal.

Source: Laws 2014, LB749, § 2.

SUBPART 2—FILING DOCUMENTS

21-203 Requirements for documents; extrinsic facts.

(MBCA 1.20) (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Secretary of State.

(b) The Nebraska Model Business Corporation Act must require or permit filing the document in the office of the Secretary of State.

(c) The document must contain the information required by the act. It may contain other information as well.

(d) The document must be typewritten or printed or, if electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form.

(e) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be signed:

(1) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(g) The person executing the document shall sign it and state beneath or opposite the person's signature the person's name and the capacity in which the document is signed. The document may but need not contain a corporate seal, attestation, acknowledgment, or verification.

(h) If the Secretary of State has prescribed a mandatory form for the document under section 21-204, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the Secretary of State for filing. Delivery may be made by electronic transmission if and to the extent permitted by the Secretary of State. If it is filed in typewritten or printed form and not transmitted electronically, the Secretary of State may require one exact or conformed copy to be delivered with the document, except as provided in sections 21-235 and 21-2,211.

(j) When the document is delivered to the office of the Secretary of State for filing, the correct filing fee, and any tax, license fee, or penalty required to be paid therewith by the Nebraska Model Business Corporation Act or other law must be paid or provision for payment made in a manner permitted by the Secretary of State.

(k) Whenever a provision of the Nebraska Model Business Corporation Act permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

(1) The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document;

(2) The facts may include, but are not limited to:

(i) Any of the following that is available in a nationally recognized news or information medium either in print or electronically: Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;

(ii) A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(iii) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document;

(3) As used in this subsection (k):

(i) Filed document means a document filed with the Secretary of State under any provision of the act except sections 21-2,203 to 21-2,220 or section 21-2,228; and

(ii) Plan means a plan of domestication, nonprofit conversion, entity conversion, merger, or share exchange;

(4) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(i) The name and address of any person required in a filed document;

(ii) The registered office of any entity required in a filed document;

(iii) The registered agent of any entity required in a filed document;

(iv) The number of authorized shares and designation of each class or series of shares;

(v) The effective date of a filed document; or

(vi) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given; and

(5) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in subdivision (k)(2)(i) of this section or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the Secretary of State articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this subdivision (k)(5) of this section are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

Source: Laws 2014, LB749, § 3.

21-204 Forms.

(MBCA 1.21) (a) The Secretary of State may prescribe and furnish on request forms for (1) an application for a certificate of existence, (2) a foreign corporation's application for a certificate of authority to transact business in this state, and (3) a foreign corporation's application for a certificate of withdrawal. If the Secretary of State so requires, use of these forms is mandatory.

(b) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed by the Nebraska Model Business Corporation Act but their use is not mandatory.

Source: Laws 2014, LB749, § 4.

21-205 Filing, service, and copying fees.

(MBCA 1.22) (a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

(1) Articles of incorporation, articles of domestication, or articles of domestication and conversion:

(i) If the filing is submitted in writing, the fee shall be \$110; and

(ii) If the filing is submitted electronically pursuant to section 84-511, the fee shall be \$100;

(2) Articles of incorporation or articles of domestication if filed by an insurer holding a certificate of authority issued by the Director of Insurance, the fee shall be \$300;

(3) Agent's statement of change of registered office for each affected corporation . . . \$30 not to exceed a total of . . . \$1,000;

(4) Agent's statement of resignation . . . No fee;

(5) Certificate of administrative dissolution . . . No fee;

(6) Application for reinstatement more than five years after the effective date of an administrative dissolution or administrative revocation . . . \$500;

(7) Certificate of reinstatement . . . No fee;

(8) Certificate of judicial dissolution . . . No fee;

(9) Application for certificate of authority:

(i) If the filing is submitted in writing, the fee shall be \$110; and

(ii) If the filing is submitted electronically pursuant to section 84-511, the fee shall be \$100;

(10) Certificate of revocation of authority to transact business . . . No fee;

(11)(i) Professional certificate submitted pursuant to section 21-2216:

(A) If the professional certificate is submitted, the fee shall be \$30; and

(B) If electronic verification is submitted in lieu of the professional certificate, the fee shall be \$55; and

(ii) Such professional certificate submitted pursuant to section 84-511:

(A) If the professional certificate is submitted, the fee shall be \$25; and

(B) If electronic verification is submitted in lieu of the professional certificate, the fee shall be \$50; and

(12) Any other document required or permitted to be filed by the Nebraska Model Business Corporation Act:

- (i) If the filing is submitted in writing, the fee shall be \$30; and
- (ii) If the filing is submitted electronically pursuant to section 84-511, the fee shall be \$25;
- (b) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:
 - (1) One dollar per page for copying; and
 - (2) Ten dollars for the certificate.
- (c) All fees set forth in this section shall be collected by the Secretary of State and remitted to the State Treasurer and credited sixty percent to the General Fund and forty percent to the Secretary of State Cash Fund.

Source: Laws 2014, LB749, § 5; Laws 2015, LB279, § 3; Laws 2020, LB910, § 5.
Operative date July 1, 2021.

21-206 Effective time and date of document.

(MBCA 1.23) (a) Except as provided in subsection (b) of this section and subsection (c) of section 21-207, a document accepted for filing is effective:

- (1) At the date and time of filing, as evidenced by such means as the Secretary of State may use for the purpose of recording the date and time of filing; or
- (2) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

Source: Laws 2014, LB749, § 6.

21-207 Correcting filed document.

(MBCA 1.24) (a) A domestic or foreign corporation may correct a document filed with the Secretary of State if (1) the document contains an inaccuracy, or (2) the document was defectively signed, attested, sealed, verified, or acknowledged, or (3) the electronic transmission was defective.

- (b) A document is corrected:
 - (1) By preparing articles of correction that:
 - (i) Describe the document, including its filing date, or attach a copy of it to the articles;
 - (ii) Specify the inaccuracy or defect to be corrected; and
 - (iii) Correct the inaccuracy or defect; and
 - (2) By delivering the articles to the Secretary of State for filing.
- (c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and

adversely affected by the correction. As to those persons, articles of correction are effective when filed.

Source: Laws 2014, LB749, § 7.

21-208 Filing duty of Secretary of State.

(MBCA 1.25) (a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of section 21-203, the Secretary of State shall file it.

(b) The Secretary of State files a document by recording it as filed on the date and at the time of receipt. After filing a document, except as provided in sections 21-235 and 21-2,211, the Secretary of State shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgment of the date and time of filing.

(c) If the Secretary of State refuses to file a document, it shall be returned to the domestic or foreign corporation or its representative within five days after the document was delivered, together with a brief, written explanation of the reason for refusal.

(d) The Secretary of State's duty to file documents under this section is ministerial. The Secretary of State's filing or refusing to file a document does not:

- (1) Affect the validity or invalidity of the document in whole or part;
- (2) Relate to the correctness or incorrectness of information contained in the document; or
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

Source: Laws 2014, LB749, § 8.

21-209 Appeal from Secretary of State's refusal to file document.

(MBCA 1.26) (a) If the Secretary of State refuses to file a document delivered for filing, the domestic or foreign corporation may appeal the refusal within thirty days after the return of the document to the district court of Lancaster County. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation of his or her refusal to file.

(b) The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 2014, LB749, § 9.

21-210 Evidentiary effect of copy of filed document.

(MBCA 1.27) A certificate from the Secretary of State delivered with a copy of a document filed by the Secretary of State, is conclusive evidence that the original document is on file with the Secretary of State.

Source: Laws 2014, LB749, § 10.

21-211 Certificate of existence.

(MBCA 1.28) (a) Anyone may apply to the Secretary of State to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(b) A certificate of existence or authorization sets forth:

(1) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(2) That:

(i) The domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual; or

(ii) That the foreign corporation is authorized to transact business in this state;

(3) That all fees, taxes, and penalties owed to this state have been paid, if:

(i) Payment is reflected in the records of the Secretary of State; and

(ii) Nonpayment affects the existence or authorization of the domestic or foreign corporation;

(4) That its most recent biennial report required by section 21-2,228 has been filed with the Secretary of State;

(5) That articles of dissolution have not been filed; and

(6) Other facts of record in the office of the Secretary of State that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

Source: Laws 2014, LB749, § 11.

21-212 Penalty for signing false document.

(MBCA 1.29) (a) A person commits an offense by signing a document that the person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) An offense under this section is a Class I misdemeanor.

Source: Laws 2014, LB749, § 12.

SUBPART 3—SECRETARY OF STATE

21-213 Powers.

(MBCA 1.30) The Secretary of State has the power reasonably necessary to perform the duties required of the Secretary of State by the Nebraska Model Business Corporation Act.

Source: Laws 2014, LB749, § 13.

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.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

21-215 Notices and other communications.

(MBCA 1.41) (a) Notice under the Nebraska Model Business Corporation Act must be in writing unless oral notice is reasonable in the circumstances. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under the act must be in English.

(b) A notice or other communication may be given or sent by any method of delivery, except that electronic transmissions must be in accordance with this section. If these methods of delivery are impractical, a notice or other communication may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective (1) when mailed, if mailed postage prepaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders, or (2) when electronically transmitted to the shareholder in a manner authorized by the shareholder. Notice by a public corporation to its shareholder is effective if the notice is addressed to the shareholder or group of shareholders in a manner permitted by rules and regulations adopted and promulgated under the federal Securities Exchange Act of 1934, as amended, 15 U.S.C. 78a et seq., if the public corporation has first received affirmative written consent or implied consent required under such rules and regulations.

(d) Notice or other communication to a domestic or foreign corporation authorized to transact business in this state may be delivered to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in its most recent biennial report or, in the case of a foreign corporation that has not yet delivered a biennial report, in its application for a certificate of authority.

(e) Notice or other communications may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection (l) of this section.

(f) Any consent under subsection (e) of this section may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if (1) the corporation is unable to deliver two consecutive electronic transmissions given by the corporation in accordance with such consent and (2) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice or other communications, except that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(g) Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

(1) It enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent and from which the recipient is able to retrieve the electronic transmission; and

(2) It is in a form capable of being processed by that system.

(h) Receipt of an electronic acknowledgment from an information processing system described in subdivision (g)(1) of this section establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

(i) An electronic transmission is received under this section even if no individual is aware of its receipt.

(j) Notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

(1) If in a physical form, the earliest of when it is actually received or when it is left at:

(i) A shareholder's address shown on the corporation's record of shareholders maintained by the corporation under subsection (c) of section 21-2,221;

(ii) A director's residence or usual place of business; or

(iii) The corporation's principal place of business;

(2) If mailed postage prepaid and correctly addressed to a shareholder, upon deposit in the United States mail;

(3) If mailed by United States mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest of when it is actually received, or:

(i) If sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee; or

(ii) Five days after it is deposited in the United States mail;

(4) If an electronic transmission, when it is received as provided in subsection (g) of this section; and

(5) If oral, when communicated.

(k) A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if (1) the electronic transmission is otherwise retrievable in perceivable form and (2) the sender and the recipient have consented in writing to the use of such form of electronic transmission.

(l) If the Nebraska Model Business Corporation Act prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications, not inconsistent with this section or other provisions of the act, those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

Source: Laws 2014, LB749, § 15.

21-216 Number of shareholders.

(MBCA 1.42) (a) For purposes of the Nebraska Model Business Corporation Act, the following identified as a shareholder in a corporation's current record of shareholders constitutes one shareholder:

(1) Three or fewer co-owners;

(2) A corporation, partnership, limited liability company, trust, estate, or other entity; or

(3) The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(b) For purposes of the act, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

Source: Laws 2014, LB749, § 16; Laws 2016, LB794, § 3.

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 generally, 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.

21-218 Householdings.

(MBCA 1.44) (a) A corporation has delivered written notice or any other report or statement under the Nebraska Model Business Corporation Act, the articles of incorporation, or the bylaws to all shareholders who share a common address if:

(1) The corporation delivers one copy of the notice, report, or statement to the common address;

(2) The corporation addresses the notice, report, or statement to those shareholders as a group, to each of those shareholders individually, or to the shareholders in a form to which each of those shareholders has consented; and

(3) Each of those shareholders consents to delivery of a single copy of such notice, report, or statement to the shareholders' common address. Any such consent shall be revocable by any of such shareholders who deliver written notice of revocation to the corporation. If such written notice of revocation is delivered, the corporation shall begin providing individual notices, reports, or other statements to the revoking shareholder no later than thirty days after delivery of the written notice of revocation.

(b) Any shareholder who fails to object by written notice to the corporation, within sixty days of written notice by the corporation of its intention to send single copies of notices, reports, or statements to shareholders who share a common address as permitted by subsection (a) of this section, shall be deemed to have consented to receiving such single copy at the common address.

Source: Laws 2014, LB749, § 18.

SUBPART 5—RATIFICATION OF DEFECTIVE CORPORATE ACTIONS

21-218.01 Definitions.

(MBCA 1.45) In sections 21-218.01 to 21-218.08:

(1) Corporate action means any action taken by or on behalf of the corporation, including any action taken by the incorporator, the board of directors, a committee of the board of directors, an officer or agent of the corporation, or the shareholders.

(2) Date of the defective corporate action means the date, or the approximate date, if the exact date is unknown, the defective corporate action was purported to have been taken.

(3) Defective corporate action means (i) any corporate action purportedly taken that is, and at the time such corporate action was purportedly taken would have been, within the power of the corporation, but is void or voidable due to a failure of authorization, and (ii) an overissue.

(4) Failure of authorization means the failure to authorize, approve, or otherwise effect a corporate action in compliance with the provisions of the Nebraska Model Business Corporation Act, the articles of incorporation or bylaws, a corporate resolution or any plan or agreement to which the corporation is a party, if and to the extent such failure would render such corporate action void or voidable.

(5) Overissue means the purported issuance of:

(i) Shares of a class or series in excess of the number of shares of a class or series the corporation has the power to issue under section 21-237 at the time of such issuance; or

(ii) Shares of any class or series that is not then authorized for issuance by the articles of incorporation.

(6) Putative shares means the shares of any class or series, including shares issued upon exercise of rights, options, warrants, or other securities convertible into shares of the corporation, or interests with respect to such shares, that were created or issued as a result of a defective corporate action, that (i) but for any failure of authorization would constitute valid shares, or (ii) cannot be determined by the board of directors to be valid shares.

(7) Valid shares means the shares of any class or series that have been duly authorized and validly issued in accordance with the act, including as a result of ratification or validation under sections 21-218.01 to 21-218.08.

(8) Validation effective time with respect to any defective corporate action ratified under sections 21-218.01 to 21-218.08 means the later of:

(i) The time at which the ratification of the defective corporate action is approved by the shareholders, or if approval of shareholders is not required, the time at which the notice required by section 21-218.05 becomes effective in accordance with section 21-215; and

(ii) The time at which any articles of validation filed in accordance with section 21-218.07 become effective.

The validation effective time shall not be affected by the filing or pendency of a judicial proceeding under section 21-218.08 or otherwise, unless otherwise ordered by the court.

Source: Laws 2020, LB808, § 3.
Operative date July 1, 2021.

21-218.02 Defective corporate actions.

(MBCA 1.46) (a) A defective corporate action shall not be void or voidable if ratified in accordance with section 21-218.03 or validated in accordance with section 21-218.08.

(b) Ratification under section 21-218.03 or validation under section 21-218.08 shall not be deemed to be the exclusive means of ratifying or validating any defective corporate action, and the absence or failure of ratification in accordance with sections 21-218.01 to 21-218.08 shall not, of itself, affect the validity or effectiveness of any corporate action properly ratified under common law or otherwise, nor shall it create a presumption that any such corporate action is or was a defective corporate action or void or voidable.

(c) In the case of an overissue, putative shares shall be valid shares effective as of the date originally issued or purportedly issued upon:

(1) The effectiveness under sections 21-218.01 to 21-218.08 and under sections 21-2,150 to 21-2,160 of an amendment to the articles of incorporation authorizing, designating, or creating such shares; or

(2) The effectiveness of any other corporate action under sections 21-218.01 to 21-218.08 ratifying the authorization, designation, or creation of such shares.

Source: Laws 2020, LB808, § 4.
Operative date July 1, 2021.

21-218.03 Ratification of defective corporate actions.

(MBCA 1.47) (a) To ratify a defective corporate action under this section, other than the ratification of an election of the initial board of directors under subsection (b) of this section, the board of directors shall take action ratifying the action in accordance with section 21-218.04, stating:

(1) The defective corporate action to be ratified and, if the defective corporate action involved the issuance of putative shares, the number and type of putative shares purportedly issued;

(2) The date of the defective corporate action;

(3) The nature of the failure of authorization with respect to the defective corporate action to be ratified; and

(4) That the board of directors approves the ratification of the defective corporate action.

(b) In the event that a defective corporate action to be ratified relates to the election of the initial board of directors of the corporation under subdivision (a)(2) of section 21-223, a majority of the persons who, at the time of the ratification, are exercising the powers of directors may take an action stating:

(1) The name of the person or persons who first took action in the name of the corporation as the initial board of directors of the corporation;

(2) The earlier of the date on which such persons first took such action or were purported to have been elected as the initial board of directors; and

(3) That the ratification of the election of such person or persons as the initial board of directors is approved.

(c) If any provision of the Nebraska Model Business Corporation Act, the articles of incorporation or bylaws, any corporate resolution, or any plan or agreement to which the corporation is a party in effect at the time action under subsection (a) of this section is taken requires shareholder approval or would have required shareholder approval at the date of the occurrence of the defective corporate action, the ratification of the defective corporate action approved in the action taken by the directors under subsection (a) of this section shall be submitted to the shareholders for approval in accordance with section 21-218.04.

(d) Unless otherwise provided in the action taken by the board of directors under subsection (a) of this section, after the action by the board of directors has been taken and, if required, approved by the shareholders, the board of directors may abandon the ratification at any time before the validation effective time without further action of the shareholders.

Source: Laws 2020, LB808, § 5.

Operative date July 1, 2021.

21-218.04 Action on ratification.

(MBCA 1.48) (a) The quorum and voting requirements applicable to a ratifying action by the board of directors under subsection (a) of section 21-218.03 shall be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time such ratifying action is taken.

(b) If the ratification of the defective corporate action requires approval by the shareholders under subsection (c) of section 21-218.03, and if the approval is to be given at a meeting, the corporation shall notify each holder of valid and

putative shares, regardless of whether entitled to vote, as of the record date for notice of the meeting and as of the date of the occurrence of defective corporate action, provided that notice shall not be required to be given to holders of valid or putative shares whose identities or addresses for notice cannot be determined from the records of the corporation. The notice must state that the purpose, or one of the purposes, of the meeting, is to consider ratification of a defective corporate action and must be accompanied by (i) either a copy of the action taken by the board of directors in accordance with subsection (c) of section 21-218.03 or the information required by subdivisions (a)(1) through (4) of section 21-218.03, and (ii) a statement that any claim that the ratification of such defective corporate action and any putative shares issued as a result of such defective corporate action should not be effective, or should be effective only on certain conditions, must be brought within one hundred twenty days from the applicable validation effective time.

(c) Except as provided in subsection (d) of this section with respect to the voting requirements to ratify the election of a director, the quorum and voting requirements applicable to the approval by the shareholders required by subsection (c) of section 21-218.03 shall be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time of such shareholder approval.

(d) The approval by shareholders to ratify the election of a director requires that the votes cast within the voting group favoring such ratification exceed the votes cast opposing such ratification of the election at a meeting at which a quorum is present.

(e) Putative shares on the record date for determining the shareholders entitled to vote on any matter submitted to shareholders under subsection (c) of section 21-218.03, and without giving effect to any ratification of putative shares that becomes effective as a result of such vote, shall neither be entitled to vote nor counted for quorum purposes in any vote to approve the ratification of any defective corporate action.

(f) If the approval under this section of putative shares would result in an overissue, in addition to the approval required by section 21-218.03, approval of an amendment to the articles of incorporation under sections 21-2,150 to 21-2,160 to increase the number of shares of an authorized class or series or to authorize the creation of a class or series of shares so there would be no overissue shall also be required.

Source: Laws 2020, LB808, § 6.

Operative date July 1, 2021.

21-218.05 Notice requirements.

(MBCA 1.49) (a) Unless shareholder approval is required under subsection (c) of section 21-218.03, prompt notice of an action taken under section 21-218.03 shall be given to each holder of valid and putative shares, regardless of whether entitled to vote, as of (i) the date of such action by the board of directors and (ii) the date of the defective corporate action ratified, provided that notice shall not be required to be given to holders of valid and putative shares whose identities or addresses for notice cannot be determined from the records of the corporation.

(b) The notice must contain (i) either a copy of the action taken by the board of directors in accordance with subsection (a) or (b) of section 21-218.03 or the

information required by subdivisions (a)(1) through (4) or (b)(1) through (3) of section 21-218.03, as applicable, and (ii) a statement that any claim that the ratification of the defective corporate action and any putative shares issued as a result of such defective corporate action should not be effective, or should be effective only on certain conditions, must be brought within one hundred twenty days from the applicable validation effective time.

(c) No notice under this section is required with respect to any action required to be submitted to shareholders for approval under subsection (c) of section 21-218.03 if notice is given in accordance with subsection (b) of section 21-218.04.

(d) A notice required by this section may be given in any manner permitted by section 21-215 and, for any corporation subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, may be given by means of a filing or furnishing of such notice with the United States Securities and Exchange Commission.

Source: Laws 2020, LB808, § 7.

Operative date July 1, 2021.

21-218.06 Effect of ratification.

(MBCA 1.50) From and after the validation effective time, and without regard to the one-hundred-twenty-day period during which a claim may be brought under section 21-218.08:

(a) Each defective corporate action ratified in accordance with section 21-218.03 shall not be void or voidable as a result of the failure of authorization identified in the action taken under subsection (a) or (b) of section 21-218.03 and shall be deemed a valid corporate action effective as of the date of the defective corporate action;

(b) The issuance of each putative share or fraction of a putative share purportedly issued pursuant to a defective corporate action identified in the action taken under section 21-218.03 shall not be void or voidable, and each such putative share or fraction of a putative share shall be deemed to be an identical share or fraction of a valid share as of the time it was purportedly issued; and

(c) Any corporate action taken subsequent to the defective corporate action ratified in accordance with sections 21-218.01 to 21-218.08 in reliance on such defective corporate action having been validly effected and any subsequent defective corporate action resulting directly or indirectly from such original defective corporate action shall be valid as of the time taken.

Source: Laws 2020, LB808, § 8.

Operative date July 1, 2021.

21-218.07 Filings.

(MBCA 1.51) (a) If the defective corporate action ratified under sections 21-218.01 to 21-218.08 would have required under any other section of the Nebraska Model Business Corporation Act a filing in accordance with the act, then, regardless of whether a filing was previously made in respect of such defective corporate action and in lieu of a filing otherwise required by the act, the corporation shall file articles of validation in accordance with this section,

and such articles of validation shall serve to amend or substitute for any other filing with respect to such defective corporate action required by the act.

(b) The articles of validation must set forth:

(1) The defective corporate action that is the subject of the articles of validation, including, in the case of any defective corporate action involving the issuance of putative shares, the number and type of putative shares issued and the date or dates upon which such putative shares were purported to have been issued;

(2) The date of the defective corporate action;

(3) The nature of the failure of authorization in respect of the defective corporate action;

(4) A statement that the defective corporate action was ratified in accordance with section 21-218.03, including the date on which the board of directors ratified such defective corporate action and the date, if any, on which the shareholders approved the ratification of such defective corporate action; and

(5) The information required by subsection (c) of this section.

(c) The articles of validation must also contain the following information:

(1) If a filing was previously made in respect of the defective corporate action and no changes to such filing are required to give effect to the ratification of such defective corporate action in accordance with section 21-218.03, the articles of validation must set forth (i) the name, title, and filing date of the filing previously made and any articles of correction to that filing and (ii) a statement that a copy of the filing previously made, together with any articles of correction to that filing, is attached as an exhibit to the articles of validation;

(2) If a filing was previously made in respect of the defective corporate action and such filing requires any change to give effect to the ratification of such defective corporate action in accordance with section 21-218.03, the articles of validation must set forth (i) the name, title, and filing date of the filing previously made and any articles of correction to that filing and (ii) a statement that a filing containing all of the information required to be included under the applicable section or sections of the act to give effect to such defective corporate action is attached as an exhibit to the articles of validation, and (iii) the date and time that such filing is deemed to have become effective; or

(3) If a filing was not previously made in respect of the defective corporate action and the defective corporate action ratified under section 21-218.03 would have required a filing under any other section of the act, the articles of validation must set forth (i) a statement that a filing containing all of the information required to be included under the applicable section or sections of the act to give effect to such defective corporate action is attached as an exhibit to the articles of validation, and (ii) the date and time that such filing is deemed to have become effective.

Source: Laws 2020, LB808, § 9.

Operative date July 1, 2021.

21-218.08 Judicial proceedings regarding validity of corporate actions.

(MBCA 1.52) (a) Upon application by the corporation, any successor entity to the corporation, a director of the corporation, any shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation,

including any such shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner as of the date of the defective corporate action ratified under section 21-218.03, or any other person claiming to be substantially and adversely affected by a ratification under section 21-218.03, the court may:

(1) Determine the validity and effectiveness of any corporate action or defective corporate action;

(2) Determine the validity and effectiveness of any ratification under section 21-218.03;

(3) Determine the validity of any putative shares; and

(4) Modify or waive any of the procedures specified in section 21-218.03 or 21-218.04 to ratify a defective corporate action.

(b) In connection with an action under this section, the court may make such findings or orders, and take into account any factors or considerations, regarding such matters as it deems proper under the circumstances.

(c) Service of process of the application under subsection (a) of this section on the corporation may be made in any manner provided by statute of this state or by rule of the applicable court for service on the corporation, and no other party need be joined in order for the court to adjudicate the matter. In an action filed by the corporation, the court may require notice of the action be provided to other persons specified by the court and permit such other persons to intervene in the action.

(d) Notwithstanding any other provision of this section or otherwise under applicable law, any action asserting that the ratification of any defective corporate action and any putative shares issued as a result of such defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought within one hundred twenty days of the validation effective time.

Source: Laws 2020, LB808, § 10.
Operative date July 1, 2021.

PART 2—INCORPORATION

21-219 Incorporators.

(MBCA 2.01) One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing.

Source: Laws 2014, LB749, § 19.

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.

21-221 Incorporation.

(MBCA 2.03) (a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(b) The Secretary of State's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

Source: Laws 2014, LB749, § 21.

21-222 Liability for preincorporation transactions.

(MBCA 2.04) All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under the Nebraska Model Business Corporation Act, are jointly and severally liable for all liabilities created while so acting.

Source: Laws 2014, LB749, § 22.

21-223 Organization of corporation.

(MBCA 2.05) (a) After incorporation:

(1) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(2) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the corporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by the Nebraska Model Business Corporation Act to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or out of this state.

Source: Laws 2014, LB749, § 23.

21-224 Bylaws.

(MBCA 2.06) (a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(b) The bylaws of a corporation may contain any provision that is not inconsistent with law or the articles of incorporation.

(c) The bylaws may contain one or both of the following provisions:

(1) A requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy statement and any form of its proxy or consent, to the extent and subject to such procedures or conditions as are provided in the bylaws, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors; and

(2) A requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting proxies or consents in connection with an election of directors, to the extent and subject to such procedures and conditions as are provided in the bylaws, except that no bylaw so adopted shall apply to elections for which any record date precedes its adoption.

(d) Notwithstanding subdivision (b)(2) of section 21-2,159, the shareholders in amending, repealing, or adopting a bylaw described in subsection (c) of this section may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in or to add any procedure or condition to such a bylaw in order to provide for a reasonable, practicable, and orderly process.

Source: Laws 2014, LB749, § 24.

21-225 Emergency bylaws.

(MBCA 2.07) (a) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (d) of this section. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

- (1) Procedures for calling a meeting of the board of directors;
- (2) Quorum requirements for the meeting; and
- (3) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

- (1) Binds the corporation; and
- (2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Source: Laws 2014, LB749, § 25.

PART 3—PURPOSES AND POWERS

21-226 Purposes.

(MBCA 3.01) (a) Every corporation incorporated under the Nebraska Model Business Corporation Act has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under the Nebraska Model Business Corporation Act only if permitted by, and subject to all limitations of, the other statute.

(c) Corporations shall not be organized under the act to perform any professional services as specified in section 21-2202 except for professional services rendered by a designated broker as defined in section 81-885.01.

(d) A designated broker as defined in section 81-885.01 may be organized as a corporation under the Nebraska Model Business Corporation Act.

Source: Laws 2014, LB749, § 26.

21-227 General powers.

(MBCA 3.02) Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power:

- (1) To sue and be sued, complain, and defend in its corporate name;
- (2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
- (3) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;
- (4) To purchase, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;
- (5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property. A corporation may transfer any interest in real estate by instrument, with or without a corporate seal, signed by the president, a vice president, or the presiding officer of the board of directors of the corporation. Such instrument, when acknowledged by such officer to be an act of the corporation, is presumed to be valid and may be recorded in the proper office of the county in which the real estate is located in the same manner as other such instruments;
- (6) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;
- (7) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
- (8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (9) To be a promoter, partner, member, associate, or manager of any limited liability company, partnership, joint venture, trust, or other entity;
- (10) To conduct its business, locate offices, and exercise the powers granted by the Nebraska Model Business Corporation Act within or without this state;

(11) To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) To make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) To transact any lawful business that will aid governmental policy; and

(15) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

Source: Laws 2014, LB749, § 27; Laws 2016, LB794, § 4.

21-228 Emergency powers.

(MBCA 3.03) (a) In anticipation of or during an emergency defined in subsection (d) of this section, the board of directors of a corporation may:

(1) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency defined in subsection (d) of this section, unless emergency bylaws provide otherwise:

(1) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(2) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(1) Binds the corporation; and

(2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Source: Laws 2014, LB749, § 28.

21-229 Ultra vires.

(MBCA 3.04) (a) Except as provided in subsection (b) of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged:

(1) In a proceeding by a shareholder against the corporation to enjoin the act;

(2) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(3) In a proceeding by the Attorney General under section 21-2,197.

(c) In a shareholder's proceeding under subdivision (b)(1) of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of joining the unauthorized act.

(d) Venue for a proceeding under subdivision (b)(1) or (b)(2) of this section lies in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located.

Source: Laws 2014, LB749, § 29.

PART 4—NAME

21-230 Corporate name.

(MBCA 4.01) (a) A corporate name:

(1) Must contain the word corporation, incorporated, company, or limited, or the abbreviation corp., inc., co., or ltd., or words or abbreviations of like import in another language, except that a corporation organized to conduct a banking business under the Nebraska Banking Act may use a name which includes the word bank without using any such words or abbreviations; and

(2) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 21-226 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name must not be the same as or deceptively similar to, upon the records of the Secretary of State:

(1) The corporate name of a corporation incorporated or authorized to transact business in this state;

(2) A corporate name reserved or registered under section 21-231 or 21-232;

(3) The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(4) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(5) A trade name registered in this state pursuant to sections 87-208 to 87-219.01; and

(6) Any other business entity name registered or filed with the Secretary of State pursuant to the law of this state.

(c) A corporation may apply to the Secretary of State for authorization to use a name that is deceptively similar to, upon the records of the Secretary of State, one or more of the names described in subsection (b) of this section. The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation or business entity consents to the use in writing; or

(2) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to transact business in this state and the proposed user corporation:

- (1) Has merged with the other corporation or business entity;
- (2) Has been formed by reorganization of the other corporation or business entity; or
- (3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation or business entity.

(e) The Nebraska Model Business Corporation Act does not control the use of fictitious names.

Source: Laws 2014, LB749, § 30.

Cross References

Nebraska Banking Act, see section 8-101.02.

21-231 Reserved name.

(MBCA 4.02) (a) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, the Secretary of State shall reserve the name for the applicant's exclusive use for a nonrenewable one-hundred-twenty-day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

Source: Laws 2014, LB749, § 31.

21-232 Registered name.

(MBCA 4.03) (a) A foreign corporation may register its corporate name, or its corporate name with any addition required by section 21-2,208, if the name is not the same as or deceptively similar to, upon the records of the Secretary of State, the corporate names that are not available under subsection (b) of section 21-230.

(b) A foreign corporation registers its corporate name, or its corporate name with any addition required by section 21-2,208, by delivering to the Secretary of State for filing an application:

- (1) Setting forth its corporate name, or its corporate name with any addition required by section 21-2,208, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and
- (2) Accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is delivered.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (b) of this section, between October 1 and December 31 of the preceding year. The renewal application when filed renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under the Nebraska Model Business Corporation Act or by another foreign corporation thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

Source: Laws 2014, LB749, § 32.

PART 5—OFFICE AND AGENT

21-233 Registered office and registered agent.

(MBCA 5.01) Each corporation must continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(i) An individual who resides in this state and whose business office is identical with the registered office; or

(ii) A domestic or foreign corporation or other eligible entity whose business office is identical with the registered office and, in the case of a foreign corporation or foreign eligible entity, is authorized to transact business in the state.

Source: Laws 2014, LB749, § 33.

21-234 Change of registered office or registered agent.

(MBCA 5.02) (a) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) The name of the corporation;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of the new registered office;

(4) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;

(5) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If the street address or post office box number of a registered agent's business office changes, the agent may change the street address or, if one

exists, the post office box number, of the registered office of any corporation for which the agent is the registered agent by delivering a signed written notice of the change to the corporation and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a signed statement that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

Source: Laws 2014, LB749, § 34.

21-235 Resignation of registered agent.

(MBCA 5.03) (a) A registered agent may resign the agent's appointment by signing and delivering to the Secretary of State for filing the signed original and two exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) After filing the statement the Secretary of State shall mail one copy to the registered office, if not discontinued, and the other copy to the corporation at its principal office.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

Source: Laws 2014, LB749, § 35.

21-236 Service on corporation.

(MBCA 5.04) (a) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(b) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:

- (1) The date the corporation receives the mail;
- (2) The date shown on the return receipt, if signed on behalf of the corporation; or
- (3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(c) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

Source: Laws 2014, LB749, § 36.

PART 6—SHARES AND DISTRIBUTIONS

SUBPART 1—SHARES

21-237 Authorized shares.

(MBCA 6.01) (a) The articles of incorporation must set forth any classes of shares and series of shares within a class, and the number of shares of each class and series, that the corporation is authorized to issue. If more than one class or series of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class or series and must de-

scribe, prior to the issuance of shares of a class or series, the terms, including the preferences, rights, and limitations, of that class or series. Except to the extent varied as permitted by this section, all shares of a class or series must have terms, including preferences, rights, and limitations that are identical with those of other shares of the same class or series.

(b) The articles of incorporation must authorize:

(1) One or more classes or series of shares that together have unlimited voting rights; and

(2) One or more classes or series of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

(c) The articles of incorporation may authorize one or more classes or series of shares that:

(1) Have special, conditional, or limited voting rights, or no right to vote, except to the extent otherwise provided by the Nebraska Model Business Corporation Act;

(2) Are redeemable or convertible as specified in the articles of incorporation:

(i) At the option of the corporation, the shareholder, or another person or upon the occurrence of a specified event;

(ii) For cash, indebtedness, securities, or other property; and

(iii) At prices and in amounts specified or determined in accordance with a formula;

(3) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(4) Have preference over any other class or series of shares with respect to distributions, including distributions upon the dissolution of the corporation.

(d) Terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with subsection (k) of section 21-203.

(e) Any of the terms of shares may vary among holders of the same class or series so long as such variations are expressly set forth in the articles of incorporation.

(f) The description of the preferences, rights, and limitations of classes or series of shares in subsection (c) of this section is not exhaustive.

Source: Laws 2014, LB749, § 37.

21-238 Terms of class or series determined by board of directors.

(MBCA 6.02) (a) If the articles of incorporation so provide, the board of directors is authorized, without shareholder approval, to:

(1) Classify any unissued shares into one or more classes or into one or more series within a class;

(2) Reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes; or

(3) Reclassify any unissued shares of any series of any class into one or more classes or into one or more series within a class.

(b) If the board of directors acts pursuant to subsection (a) of this section, it must determine the terms, including the preferences, rights, and limitations, to the same extent permitted under section 21-237, of:

- (1) Any class of shares before the issuance of any shares of that class; or
- (2) Any series within a class before the issuance of any shares of that series.

(c) Before issuing any shares of a class or series created under this section, the corporation must deliver to the Secretary of State for filing articles of amendment setting forth the terms determined under subsection (a) of this section.

Source: Laws 2014, LB749, § 38.

21-239 Issued and outstanding shares.

(MBCA 6.03) (a) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(b) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (c) of this section and to section 21-252.

(c) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

Source: Laws 2014, LB749, § 39.

21-240 Fractional shares.

(MBCA 6.04) (a) A corporation may:

- (1) Issue fractions of a share or pay in money the value of fractions of a share;
- (2) Arrange for disposition of fractional shares by the shareholders; and
- (3) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(b) Each certificate representing scrip must be conspicuously labeled scrip and must contain the information required by subsection (b) of section 21-246.

(c) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(d) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

- (1) That the scrip will become void if not exchanged for full shares before a specified date; and
- (2) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

Source: Laws 2014, LB749, § 40.

SUBPART 2—ISSUANCE OF SHARES

21-241 Subscription for shares before incorporation.

(MBCA 6.20) (a) A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscription for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(c) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(d) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid for more than twenty days after the corporation sends written demand for payment to the subscriber.

(e) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to section 21-242.

Source: Laws 2014, LB749, § 41.

21-242 Issuance of shares.

(MBCA 6.21) (a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(b) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(c) Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(d) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

(e) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

(f)(1) An issuance of shares or other securities convertible into or rights exercisable for shares, in a transaction or a series of integrated transactions, requires approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the matter exists if:

(i) The shares, other securities, or rights are issued for consideration other than cash or cash equivalents; and

(ii) The voting power of shares that are issued and issuable as a result of the transaction or series of integrated transactions will comprise more than twenty percent of the voting power of the shares of the corporation that were outstanding immediately before the transaction.

(2) In this subsection:

(i) For purposes of determining the voting power of shares issued and issuable as a result of a transaction or series of integrated transactions, the voting power of shares shall be the greater of (A) the voting power of the shares to be issued or (B) the voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued; and

(ii) A series of transactions is integrated if consummation of one transaction is made contingent on consummation of one or more of the other transactions.

Source: Laws 2014, LB749, § 42.

21-243 Liability of shareholders.

(MBCA 6.22) (a) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued under section 21-242 or specified in the subscription agreement under section 21-241.

(b) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation, except that he or she may become personally liable by reason of his or her own acts or conduct.

Source: Laws 2014, LB749, § 43.

21-244 Share dividends.

(MBCA 6.23) (a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(b) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless (1) the articles of incorporation so authorize, (2) a majority of the votes entitled to be cast by the class or series to be issued approve the issue, or (3) there are no outstanding shares of the class or series to be issued.

(c) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

Source: Laws 2014, LB749, § 44.

21-245 Share options and other awards.

(MBCA 6.24) (a) A corporation may issue rights, options, or warrants for the purchase of shares or other securities of the corporation. The board of directors shall determine (1) the terms upon which the rights, options, or warrants are issued and (2) the terms, including the consideration for which the shares or

other securities are to be issued. The authorization by the board of directors for the corporation to issue such rights, options, or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options, or warrants are exercisable.

(b) The terms and conditions of such rights, options, or warrants, including those outstanding on January 1, 2017, may include, without limitation, restrictions or conditions that:

(1) Preclude or limit the exercise, transfer, or receipt of such rights, options, or warrants by any person or persons owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation or by any transferee or transferees of any such person or persons; or

(2) Invalidate or void such rights, options, or warrants held by any such person or persons or any such transferee or transferees.

(c) The board of directors may authorize one or more officers to (1) designate the recipients of rights, options, warrants, or other equity compensation awards that involve the issuance of shares and (2) determine, within an amount and subject to any other limitations established by the board and, if applicable, the stockholders, the number of such rights, options, warrants, or other equity compensation awards and the terms thereof to be received by the recipients, except that an officer may not use such authority to designate himself or herself or any other persons as the board of directors may specify as a recipient of such rights, options, warrants, or other equity compensation awards.

Source: Laws 2014, LB749, § 45; Laws 2015, LB157, § 1.

21-246 Form and content of certificates.

(MBCA 6.25) (a) Shares may but need not be represented by certificates. Unless the Nebraska Model Business Corporation Act or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(b) At a minimum each share certificate must state on its face:

(1) The name of the issuing corporation and that it is organized under the law of this state;

(2) The name of the person to whom issued; and

(3) The number and class of shares and the designation of the series, if any, the certificate represents.

(c) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series, and the authority of the board of directors to determine variations for future series, must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(d) Each share certificate (1) must be signed, either manually or in facsimile, by two officers designated in the bylaws or by the board of directors and (2) may bear the corporate seal or its facsimile.

(e) If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

Source: Laws 2014, LB749, § 46.

21-247 Shares without certificates.

(MBCA 6.26) (a) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(b) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by subsections (b) and (c) of section 21-246, and, if applicable, section 21-248.

Source: Laws 2014, LB749, § 47.

21-248 Restriction on transfer of shares and other securities.

(MBCA 6.27) (a) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by subsection (b) of section 21-247. Unless so noted or contained, a restriction is not enforceable against a person without knowledge of the restriction.

(c) A restriction on the transfer or registration of transfer of shares is authorized:

(1) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(2) To preserve exemptions under federal or state securities law or under the Internal Revenue Code; or

(3) For any other reasonable purpose.

(d) A restriction on the transfer or registration of transfer of shares may:

(1) Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(2) Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;

(3) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

(4) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(e) For purposes of this section, shares includes a security convertible into or carrying a right to subscribe for or acquire shares.

Source: Laws 2014, LB749, § 48.

21-249 Expense of issue.

(MBCA 6.28) A corporation may pay the expenses of selling or underwriting its shares and of organizing or reorganizing the corporation from the consideration received for shares.

Source: Laws 2014, LB749, § 49.

SUBPART 3—SUBSEQUENT ACQUISITION OF SHARES BY SHAREHOLDERS AND CORPORATION

21-250 Shareholders' preemptive rights.

(MBCA 6.30) (a) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide. The shareholders of a corporation organized prior to January 1, 1996, shall continue to have a preemptive right to acquire the corporation's unissued shares in the manner provided in this section if the articles of incorporation of the corporation did not on or after January 1, 1996, expressly eliminate such preemptive rights to its shareholders.

(b) A statement included in the articles of incorporation that the corporation elects to have preemptive rights, or words of similar import, means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(1) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them;

(2) A shareholder may waive his or her preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration;

(3) There is no preemptive right with respect to:

(i) Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

(ii) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

(iii) Shares authorized in articles of incorporation that are issued within six months from the effective date of incorporation; and

(iv) Shares sold otherwise than for money;

(4) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class;

(5) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with

respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights; and

(6) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

(c) For purposes of this section, shares includes a security convertible into or carrying a right to subscribe for or acquire shares.

Source: Laws 2014, LB749, § 50; Laws 2016, LB794, § 5.

21-251 Corporation's acquisition of its own shares.

(MBCA 6.31) (a) A corporation may acquire its own shares, and shares so acquired constitute authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired.

Source: Laws 2014, LB749, § 51.

SUBPART 4—DISTRIBUTIONS

21-252 Distributions to shareholders.

(MBCA 6.40) (a) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (c) of this section.

(b) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.

(c) No distribution may be made if, after giving it effect:

(1) The corporation would not be able to pay its debts as they become due in the usual course of business; or

(2) The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(d) The board of directors may base a determination that a distribution is not prohibited under subsection (c) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(e) Except as provided in subsection (g) of this section, the effect of a distribution under subsection (c) of this section is measured:

(1) In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of (i) the date money or other

property is transferred or debt incurred by the corporation or (ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(2) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) In all other cases, as of (i) the date the distribution is authorized if the payment occurs within one hundred twenty days after the date of authorization or (ii) the date the payment is made if it occurs more than one hundred twenty days after the date of authorization.

(f) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(g) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (c) of this section if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(h) This section shall not apply to distributions in liquidation under sections 21-2,184 to 21-2,202.

Source: Laws 2014, LB749, § 52.

PART 7—SHAREHOLDERS

SUBPART 1—MEETINGS

21-253 Annual meeting.

(MBCA 7.01) (a) Unless directors are elected by written consent in lieu of an annual meeting as permitted by section 21-256, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual 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 in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(d) Notwithstanding the provisions of this section, a corporation registered as an investment company under the federal Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq., which, pursuant to section 21-220, has included in its articles of incorporation a provision limiting or eliminating the requirement to hold an annual meeting of the shareholders, is not required to hold an annual meeting of the shareholders except as provided in such articles of incorporation or as otherwise required by such act and the rules and regulations adopted and promulgated under such act.

Source: Laws 2014, LB749, § 53; Laws 2016, LB794, § 6.

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.

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.

21-256 Action without meeting.

(MBCA 7.04) (a) Action required or permitted by the Nebraska Model Business Corporation Act to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents bearing the date of signature and describing the action taken, signed by all the shareholders entitled to vote on the action and delivered to the corporation for inclusion in the minutes or filing with the corporation records.

(b) The articles of incorporation may provide that any action required or permitted by the Nebraska Model Business Corporation Act to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action so taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted; provided that the use of written consent to elect directors must be unanimous. The written consent shall bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporation records.

(c) If not otherwise fixed under section 21-259 and if prior board action is not required respecting the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting shall be the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under section 21-259 and if prior board action is required respecting the action to be taken without a meeting, the record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the earliest date on which a consent delivered to the corporation as required by this section was signed, written consents signed by sufficient shareholders to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporate action are delivered to the corporation.

(d) A consent signed pursuant to the provisions of this section has the effect of a vote taken at a meeting and may be described as such in any document. Unless the articles of incorporation, bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent shall be effective when written consents signed by sufficient shareholders to take the action are delivered to the corporation.

(e) If the Nebraska Model Business Corporation Act requires that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the action not more than ten days

after (1) written consents sufficient to take the action have been delivered to the corporation or (2) such later date that tabulation of consents is completed pursuant to an authorization under subsection (d) of this section. The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of the act, would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(f) If action is taken by less than unanimous written consent of the voting shareholders, the corporation must give its nonconsenting voting shareholders written notice of the action not more than ten days after (1) written consents sufficient to take the action have been delivered to the corporation or (2) such later date that tabulation of consents is completed pursuant to an authorization under subsection (d) of this section. The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of the Nebraska Model Business Corporation Act, would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(g) The notice requirements in subsections (e) and (f) of this section shall not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent, except that this subsection shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice within the required time period.

Source: Laws 2014, LB749, § 56; Laws 2016, LB794, § 7.

21-257 Notice of meeting.

(MBCA 7.05) (a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten nor more than sixty days before the meeting date. If the board of directors has authorized participation by means of remote communication pursuant to section 21-261 for any class or series of shareholders, the notice to such class or series of shareholders shall describe the means of remote communication to be used. The notice shall include the record date for determining the shareholders entitled to vote at the meeting, if such date is different than the record date for determining shareholders entitled to notice of the meeting. Unless the Nebraska Model Business Corporation Act or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting as of the record date for determining the shareholders entitled to notice of the meeting.

(b) Unless the Nebraska Model Business Corporation Act or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under section 21-255 or 21-259, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 21-259, however, notice of the adjourned meeting must be given under this section to shareholders entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

Source: Laws 2014, LB749, § 57.

21-258 Waiver of notice.

(MBCA 7.06) (a) A shareholder may waive any notice required by the Nebraska Model Business Corporation Act, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A shareholder's attendance at a meeting:

(1) Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

Source: Laws 2014, LB749, § 58.

21-259 Record date.

(MBCA 7.07) (a) The bylaws may fix or provide the manner of fixing the record date or dates for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(b) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of shareholders.

(c) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date or dates which it must do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

(d) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date or dates continue in effect or it may fix a new record date or dates.

(e) The record date for a shareholders' meeting fixed by or in the manner provided in the bylaws or by the board of directors shall be the record date for determining shareholders entitled both to notice of and to vote at the shareholders' meeting, unless in the case of a record date fixed by the board of directors and to the extent not prohibited by the bylaws, the board, at the time

it fixes the record date for shareholders entitled to notice of the meeting, fixes a later record date on or before the date of the meeting to determine the shareholders entitled to vote at the meeting.

Source: Laws 2014, LB749, § 59.

21-260 Conduct of the meeting.

(MBCA 7.08) (a) At each meeting of shareholders, a chairperson shall preside. The chairperson shall be appointed as provided in the bylaws or, in the absence of such provision, by the board.

(b) The chairperson, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

(c) Any rules adopted for, and the conduct of, the meeting shall be fair to shareholders.

(d) The chairperson of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies, or votes nor any revocations or changes thereto may be accepted.

Source: Laws 2014, LB749, § 60.

21-261 Remote participation in annual and special meetings.

(MBCA 7.09) (a) Shareholders of any class or series may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes such participation for such class or series. Participation by means of remote communication shall be subject to such guidelines and procedures as the board of directors adopts and shall be in conformity with subsection (b) of this section.

(b) Shareholders participating in a shareholders' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures:

- (1) To verify that each person participating remotely is a shareholder; and
- (2) To provide such shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate and to read or hear the proceedings of the meeting substantially concurrently with such proceedings.

Source: Laws 2014, LB749, § 61.

SUBPART 2—VOTING

21-262 Shareholders' list for meeting.

(MBCA 7.20) (a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. If the board of directors fixes a different record date under subsection (e) of section 21-259 to determine the shareholders entitled to vote at the meeting, a corporation also shall prepare an alphabetical list of the names of all its shareholders who are entitled to vote at the meeting. A list must be arranged by voting group, and within each voting

group by class or series of shares, and show the address of and number of shares held by each shareholder.

(b) The shareholders' list for notice must be available for inspection by any shareholder, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholders' list for voting must be similarly available for inspection promptly after the record date for voting. A shareholder, or the shareholder's agent or attorney, is entitled upon written demand to inspect and, subject to the requirements of subsection (c) of section 21-2,222, to copy a list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(c) The corporation shall make the list of shareholders entitled to vote available at the meeting, and any shareholder, or the shareholder's agent or attorney, is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, or the shareholder's agent or attorney, to inspect a shareholders' list before or at the meeting or copy a list as permitted by 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, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

Source: Laws 2014, LB749, § 62.

21-263 Voting entitlement of shares.

(MBCA 7.21) (a) Except as provided in subsections (b) and (d) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(b) Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(c) Subsection (b) of this section does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(d) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

Source: Laws 2014, LB749, § 63.

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.

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.

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.

21-267 Quorum and voting requirements for voting groups.

(MBCA 7.25) (a) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(b) Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(c) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation require a greater number of affirmative votes.

(d) An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (a) or (c) of this section is governed by section 21-269.

(e) The election of directors is governed by section 21-270.

(f) Whenever a provision of the Nebraska Model Business Corporation Act provides for voting of classes or series as separate voting groups, the rules provided in subsection (c) of section 21-2,153 for amendments of articles of incorporation apply to that provision.

Source: Laws 2014, LB749, § 67.

21-268 Action by single and multiple voting groups.

(MBCA 7.26) (a) If the articles of incorporation or the Nebraska Model Business Corporation Act provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in section 21-267.

(b) If the articles of incorporation or the act provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section 21-267. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

Source: Laws 2014, LB749, § 68.

21-269 Greater quorum or voting requirements.

(MBCA 7.27) (a) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is provided for by the Nebraska Model Business Corporation Act.

(b) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

Source: Laws 2014, LB749, § 69.

21-270 Voting for directors; cumulative voting.

(MBCA 7.28) (a) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(b) In all elections for directors, every shareholder entitled to vote at such elections shall have the right to vote in person or by proxy for the number of shares owned by him or her, for as many persons as there are directors to be elected or to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his or her shares shall equal, or to distribute them upon the same principle among as many candidates as he or she thinks fit, and such directors shall not be elected in any other manner.

Source: Laws 2014, LB749, § 70.

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.

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.

SUBPART 3—VOTING TRUSTS AND AGREEMENTS

21-272 Voting trusts.

(MBCA 7.30) (a) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee must prepare a list of the names and addresses of all voting trust beneficial owners, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(b) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name.

(c) Limits, if any, on the duration of a voting trust shall be as set forth in the voting trust. A voting trust that became effective when the business corporation statutes repealed by Laws 2014, LB749, provided a ten-year limit on its duration remains governed by the provisions of such statutes then in effect, unless the voting trust is amended to provide otherwise by unanimous agreement of the parties to the voting trust.

Source: Laws 2014, LB749, § 72.

21-273 Voting agreements.

(MBCA 7.31) (a) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A

voting agreement created under this section is not subject to the provisions of section 21-272.

(b) A voting agreement created under this section is specifically enforceable.

Source: Laws 2014, LB749, § 73.

21-274 Shareholder agreements.

(MBCA 7.32) (a) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of the Nebraska Model Business Corporation Act in that it:

(1) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(2) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in section 21-252;

(3) Establishes who shall be directors or officers of the corporation or their terms of office or manner of selection or removal;

(4) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(5) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

(6) Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(7) Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or

(8) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation, or among any of them, and is not contrary to public policy.

(b) An agreement authorized by this section shall be:

(1) As set forth (i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement or (ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation; and

(2) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise.

(c) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by subsection (b) of section 21-247. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any

purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of ninety days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

(d) An agreement authorized by this section shall cease to be effective when the corporation becomes a public corporation. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(e) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(f) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(g) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

(h) Limits, if any, on the duration of an agreement authorized by this section shall be as set forth in the agreement. An agreement that became effective when the business corporation statutes repealed by Laws 2014, LB749, provided for a ten-year limit on duration of shareholder agreements, unless the agreement provided otherwise, remains governed by the provisions of such statutes then in effect.

Source: Laws 2014, LB749, § 74.

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.

21-276 Standing.

(MBCA 7.41) A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

- (1) Was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and
- (2) Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

Source: Laws 2014, LB749, § 76.

21-277 Demand.

(MBCA 7.42) (a) No shareholder may commence a derivative proceeding until:

- (1) A written demand has been made upon the corporation to take suitable action; and
- (2) Ninety days have expired from the date delivery of the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety-day period.

(b) Venue for a proceeding under this section lies in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located.

Source: Laws 2014, LB749, § 77.

21-278 Stay of proceedings.

(MBCA 7.43) If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

Source: Laws 2014, LB749, § 78.

21-279 Dismissal.

(MBCA 7.44) (a) A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsection (b) or (e) of this section has determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(b) Unless a panel is appointed pursuant to subsection (e) of this section, the determination in subsection (a) of this section shall be made by:

- (1) A majority vote of qualified directors present at a meeting of the board of directors if the qualified directors constitute a quorum; or
- (2) A majority vote of a committee consisting of two or more qualified directors appointed by majority vote of qualified directors present at a meeting of the board of directors, regardless of whether such qualified directors constitute a quorum.

(c) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing either (1) that a majority of the board of directors did not consist of qualified directors at the time the determination was

made or (2) that the requirements of subsection (a) of this section have not been met.

(d) If a majority of the board of directors consisted of qualified directors at the time the determination was made, the plaintiff shall have the burden of proving that the requirements of subsection (a) of this section have not been met, and if not, the corporation shall have the burden of proving that the requirements of subsection (a) of this section have been met.

(e) Upon motion by the corporation, the court may appoint a panel of one or more individuals to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection (a) of this section have not been met.

Source: Laws 2014, LB749, § 79.

21-280 Discontinuance or settlement.

(MBCA 7.45) A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

Source: Laws 2014, LB749, § 80.

21-281 Payment of expenses.

(MBCA 7.46) On termination of the derivative proceeding the court may:

(1) Order the corporation to pay the plaintiff's reasonable expenses, including attorney's fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) Order the plaintiff to pay any defendant's reasonable expenses, including attorney's fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) Order a party to pay an opposing party's reasonable expenses, including attorney's fees, incurred because of the filing of a pleading, motion, or other paper, if it finds that the pleading, motion, or other paper was not well grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and was interposed for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

Source: Laws 2014, LB749, § 81.

21-282 Applicability to foreign corporations.

(MBCA 7.47) In any derivative proceeding in the right of a foreign corporation, the matters covered by sections 21-275 to 21-282 shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for sections 21-278, 21-280, and 21-281.

Source: Laws 2014, LB749, § 82.

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.

PART 8—DIRECTORS AND OFFICERS

SUBPART 1—BOARD OF DIRECTORS

21-284 Requirement for and functions of board of directors.

(MBCA 8.01) (a) Except as provided in section 21-274, each corporation must have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of the board of directors of the corporation, and the business and affairs of the corporation shall be managed by or under the direction and subject to the oversight of its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under section 21-274.

(c) In the case of a public corporation, the board's oversight responsibilities include attention to:

- (1) Business performance and plans;
- (2) Major risks to which the corporation is or may be exposed;
- (3) The performance and compensation of senior officers;
- (4) Policies and practices to foster the corporation's compliance with law and ethical conduct;
- (5) Preparation of the corporation's financial statements;
- (6) The effectiveness of the corporation's internal controls;
- (7) Arrangements for providing adequate and timely information to directors; and
- (8) The composition of the board and its committees, taking into account the important role of independent directors.

Source: Laws 2014, LB749, § 84.

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.

21-286 Number and election of directors.

(MBCA 8.03) (a) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws.

(c) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section 21-289.

(d) If a corporation is registered as an investment company under the federal Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq., and, pursuant to section 21-220, has included in its articles of incorporation a provision limiting or eliminating the requirement to hold an annual meeting of the shareholders, the initial directors shall be elected at the first meeting of the shareholders after such provision limiting or eliminating such meeting is included in the articles of incorporation, and thereafter the election of directors by shareholders is not required unless required by such federal act or the rules and regulations under such act or otherwise required by the Nebraska Model Business Corporation Act.

Source: Laws 2014, LB749, § 86.

21-287 Election of directors by certain classes of shareholders.

(MBCA 8.04) If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. A class, or classes, of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

Source: Laws 2014, LB749, § 87.

21-288 Terms of directors generally.

(MBCA 8.05) (a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) The terms of all other directors expire at the next or, if their terms are staggered in accordance with section 21-289, at the applicable second or third annual shareholders' meeting following their election, except to the extent a shorter term is specified in the articles of incorporation in the event of a director nominee failing to receive a specified vote for election.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(e) Except to the extent otherwise provided in the articles of incorporation, despite the expiration of a director's term, the director continues to serve until

the director's successor is elected and qualifies or there is a decrease in the number of directors.

Source: Laws 2014, LB749, § 88.

21-289 Staggered terms for directors.

(MBCA 8.06) The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be practicable. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

Source: Laws 2014, LB749, § 89.

21-290 Resignation of directors.

(MBCA 8.07) (a) A director may resign at any time by delivering a written resignation to the board of directors or its chairperson or to the secretary of the corporation.

(b) A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that it is irrevocable.

Source: Laws 2014, LB749, § 90.

21-291 Removal of directors by shareholders.

(MBCA 8.08) (a) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

(c) A director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against removal.

(d) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

Source: Laws 2014, LB749, § 91.

21-292 Removal of directors by judicial proceeding.

(MBCA 8.09) (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 remove a director of the corporation from office in a proceeding commenced by or in the right of the corporation if the court finds that (1) the director engaged in fraudulent conduct with respect to the corporation or its shareholders,

grossly abused the position of director, or intentionally inflicted harm on the corporation and (2) considering the director's course of conduct and the inadequacy of other available remedies, removal would be in the best interest of the corporation.

(b) A shareholder proceeding on behalf of the corporation under subsection (a) of this section shall comply with all of the requirements of sections 21-275 to 21-282, except subdivision (1) of section 21-276.

(c) The court, in addition to removing the director, may bar the director from reelection for a period prescribed by the court.

(d) Nothing in this section limits the equitable powers of the court to order other relief.

Source: Laws 2014, LB749, § 92.

21-293 Vacancy on board.

(MBCA 8.10) (a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) The shareholders may fill the vacancy;

(2) The board of directors may fill the vacancy; or

(3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders, and only the directors elected by that voting group are entitled to fill the vacancy if it is filled by the directors.

(c) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under subsection (b) of section 21-290 or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

Source: Laws 2014, LB749, § 93.

21-294 Compensation of directors.

(MBCA 8.11) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

Source: Laws 2014, LB749, § 94.

SUBPART 2—MEETINGS AND ACTION OF THE BOARD

21-295 Meetings.

(MBCA 8.20) (a) The board of directors may hold regular or special meetings in or out of this state.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear

each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Source: Laws 2014, LB749, § 95.

21-296 Action without meeting.

(MBCA 8.21) (a) Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by the Nebraska Model Business Corporation Act to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

(b) Action taken under this section is the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action taken thereunder is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all the directors.

(c) A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

Source: Laws 2014, LB749, § 96.

21-297 Notice of meeting.

(MBCA 8.22) (a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

Source: Laws 2014, LB749, § 97.

21-298 Waiver of notice.

(MBCA 8.23) (a) A director may waive any notice required by the Nebraska Model Business Corporation Act, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b) of this section, the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Source: Laws 2014, LB749, § 98.

21-299 Quorum and voting.

(MBCA 8.24) (a) Unless the articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in the Nebraska Model Business Corporation Act, a quorum of a board of directors consists of:

(1) A majority of the fixed number of directors if the corporation has a fixed board size; or

(2) A majority of the number of directors prescribed, or if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined under subsection (a) of this section.

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (1) The director objects at the beginning of the meeting, or promptly upon arrival, to holding it or transacting business at the meeting; (2) the dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

Source: Laws 2014, LB749, § 99.

21-2,100 Committees.

(MBCA 8.25) (a) Unless the Nebraska Model Business Corporation Act or the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint one or more members of the board of directors to serve on any such committee.

(b) Unless the Nebraska Model Business Corporation Act otherwise provides, the creation of a committee and appointment of members to it must be approved by the greater of (1) a majority of all the directors in office when the action is taken or (2) the number of directors required by the articles of incorporation or bylaws to take action under section 21-299.

(c) Sections 21-295 to 21-299 apply both to committees of the board and to their members.

(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the powers of the board of directors under section 21-284.

(e) A committee may not, however:

(1) Authorize or approve distributions, except according to a formula or method, or within limits, prescribed by the board of directors;

(2) Approve or propose to shareholders action that the Nebraska Model Business Corporation Act requires be approved by shareholders;

(3) Fill vacancies on the board of directors or, subject to subsection (g) of this section, on any of its committees; or

(4) Adopt, amend, or repeal bylaws.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 21-2,102.

(g) The board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation or the bylaws or the resolution creating the committee provide otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, unanimously, may appoint another director to act in place of the absent or disqualified member.

Source: Laws 2014, LB749, § 100.

21-2,101 Submission of matters for shareholder vote.

(MBCA 8.26) A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines it no longer recommends the matter.

Source: Laws 2014, LB749, § 101.

SUBPART 3—DIRECTORS

21-2,102 Standards of conduct for directors.

(MBCA 8.30) (a)(1) Each member of the board of directors, when discharging the duties of a director, shall act (i) in good faith and (ii) in a manner the director reasonably believes to be in the best interests of the corporation.

(2) A director may, but need not, in considering the best interests of the corporation, consider, among other things, the effects of any action on employees, suppliers, creditors, and customers of the corporation and communities in which offices or other facilities of the corporation are located.

(b) The members of the board of directors or a committee of the board, when becoming informed in connection with their decisionmaking function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

(c) In discharging board or committee duties, a director shall disclose, or cause to be disclosed, to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decisionmaking or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

(d) In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subdivision (f)(1) or (f)(3) of this section to whom the board may have delegated, formally or informally by course of

conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

(e) In discharging board or committee duties a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (f) of this section.

(f) A director is entitled to rely, in accordance with subsection (d) or (e) of this section, on:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;

(2) Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters (i) within the particular person's professional or expert competence or (ii) as to which the particular person merits confidence; or

(3) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

Source: Laws 2014, LB749, § 102.

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 persuasion 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.

21-2,104 Directors' liability for unlawful distributions.

(MBCA 8.33) (a) A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to subsection (a) of section 21-252 or subsection (a) of section 21-2,192 is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating subsection (a) of section 21-252 or subsection (a) of section 21-2,192 if the party asserting liability establishes that when taking the action the director did not comply with section 21-2,102.

(b) A director held liable under subsection (a) of this section for an unlawful distribution is entitled to:

(1) Contribution from every other director who could be held liable under subsection (a) of this section for the unlawful distribution; and

(2) Recoupment from each shareholder of the pro rata portion of the amount of the unlawful distribution the shareholder accepted, knowing the distribution

was made in violation of subsection (a) of section 21-252 or subsection (a) of section 21-2,192.

(c) A proceeding to enforce:

(1) The liability of a director under subsection (a) of this section is barred unless it is commenced within two years after the date (i) on which the effect of the distribution was measured under subsection (e) or (g) of section 21-252, (ii) as of which the violation of subsection (a) of section 21-252 occurred as the consequence of disregard of a restriction in the articles of incorporation, or (iii) on which the distribution of assets to shareholders under subsection (a) of section 21-2,192 was made; or

(2) Contribution or recoupment under subsection (b) of this section is barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection (a) of this section.

Source: Laws 2014, LB749, § 104.

SUBPART 4—OFFICERS

21-2,105 Officers.

(MBCA 8.40) (a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall assign to one of the officers responsibility for preparing the minutes of the directors' and shareholders' meetings and for maintaining and authenticating the records of the corporation required to be kept under subsections (a) and (e) of section 21-2,221.

(d) The same individual may simultaneously hold more than one office in a corporation.

Source: Laws 2014, LB749, § 105.

21-2,106 Functions of officers.

(MBCA 8.41) Each officer has the authority and shall perform the functions set forth in the bylaws or, to the extent consistent with the bylaws, the functions prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the functions of other officers.

Source: Laws 2014, LB749, § 106.

21-2,107 Standards of conduct for officers.

(MBCA 8.42) (a) An officer, when performing in such capacity, has the duty to act:

(1) In good faith;

(2) With the care that a person in a like position would reasonably exercise under similar circumstances; and

(3) In a manner the officer reasonably believes to be in the best interests of the corporation.

(b) The duty of an officer includes the obligation:

(1) To inform the superior officer to whom, or the board of directors or the committee thereof to which, the officer reports of information about the affairs of the corporation known to the officer, within the scope of the officer's functions, and known to the officer to be material to such superior officer, board, or committee; and

(2) To inform his or her superior officer, or another appropriate person within the corporation, or the board of directors, or a committee thereof, of any actual or probable material violation of law involving the corporation or material breach of duty to the corporation by an officer, employee, or agent of the corporation, that the officer believes has occurred or is likely to occur.

(c) In discharging his or her duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on:

(1) The performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated; or

(2) Information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented or by legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters (i) within the particular person's professional or expert competence or (ii) as to which the particular person merits confidence.

(d) An officer 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 an officer if the duties of the office are performed in compliance with this section. Whether an officer who does not comply with this section shall have liability will depend in such instance on applicable law, including those principles of section 21-2,103 that have relevance.

Source: Laws 2014, LB749, § 107.

21-2,108 Resignation and removal of officers.

(MBCA 8.43) (a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time and the board or the appointing officer accepts the future effective time, the board or the appointing officer may fill the pending vacancy before the effective time if the board or the appointing officer provides that the successor does not take office until the effective time.

(b) An officer may be removed at any time with or without cause by (1) the board of directors, (2) the officer who appointed such officer, unless the bylaws or the board of directors provide otherwise, or (3) any other officer if authorized by the bylaws or the board of directors.

(c) In this section, appointing officer means the officer, including any successor to that officer, who appointed the officer resigning or being removed.

Source: Laws 2014, LB749, § 108.

21-2,109 Contract rights of officers.

(MBCA 8.44) (a) The appointment of an officer does not itself create contract rights.

(b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

Source: Laws 2014, LB749, § 109.

SUBPART 5—INDEMNIFICATION AND ADVANCE FOR EXPENSES

21-2,110 Subpart definitions.

(MBCA 8.50) In sections 21-2,110 to 21-2,119:

(1) Corporation includes any domestic or foreign predecessor entity of a corporation in a merger.

(2) Director or officer means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, manager, member of a limited liability company, partner, trustee, employee, or agent of another entity or employee benefit plan. A director or officer is considered to be serving an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. Director or officer includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

(3) Liability means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

(4) Official capacity means (i) when used with respect to a director, the office of director in a corporation and (ii) when used with respect to an officer, as contemplated in section 21-2,116, the office in a corporation held by the officer. Official capacity does not include service for any other domestic or foreign corporation or any limited liability company, partnership, joint venture, trust, employee benefit plan, or other entity.

(5) Party means an individual who was, is, or is threatened to be made, a defendant or respondent in a proceeding.

(6) Proceeding means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and whether formal or informal.

Source: Laws 2014, LB749, § 110; Laws 2016, LB794, § 8.

21-2,111 Permissible indemnification.

(MBCA 8.51) (a) Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if:

(1)(i) The director conducted himself or herself in good faith; and

(ii) Reasonably believed:

(A) In the case of conduct in an official capacity, that his or her conduct was in the best interests of the corporation; and

(B) In all other cases, that the director's conduct was at least not opposed to the best interests of the corporation; and

(iii) In the case of any criminal proceeding, the director had no reasonable cause to believe his or her conduct was unlawful; or

(2) The director engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation, as authorized by subdivision (b)(5) of section 21-220.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in, and the beneficiaries of, the plan is conduct that satisfies the requirement of subdivision (a)(1)(ii)(B) of this section.

(c) The termination of a proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

(d) Unless ordered by a court under subdivision (a)(3) of section 21-2,114, a corporation may not indemnify a director:

(1) In connection with a proceeding by or in the right of the corporation, except for expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (a) of this section; or

(2) In connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis of receiving a financial benefit to which he or she was not entitled, whether or not involving action in the director's official capacity.

Source: Laws 2014, LB749, § 111.

21-2,112 Mandatory indemnification.

(MBCA 8.52) A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because he or she was a director of the corporation against expenses incurred by the director in connection with the proceeding.

Source: Laws 2014, LB749, § 112.

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.

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.

21-2,115 Determination and authorization of indemnification.

(MBCA 8.55) (a) A corporation may not indemnify a director under section 21-2,111 unless authorized for a specific proceeding after a determination has been made that indemnification is permissible because the director has met the relevant standard of conduct set forth in section 21-2,111.

(b) The determination shall be made:

(1) If there are two or more qualified directors, by the board of 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 of two or more qualified directors appointed by such a vote;

(2) By special legal counsel:

(i) Selected in the manner prescribed in subdivision (1) of this subsection; or

(ii) If there are fewer than two qualified directors, selected by the board of directors, in which selection directors who are not qualified directors may participate; or

(3) 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 determination.

(c) Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two qualified directors, or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled to select special legal counsel under subdivision (b)(2)(ii) of this section.

Source: Laws 2014, LB749, § 115.

21-2,116 Indemnification of officers.

(MBCA 8.56) (a) A corporation may indemnify and advance expenses under sections 21-2,110 to 21-2,119 to an officer of the corporation who is a party to a proceeding because he or she is an officer of the corporation:

(1) To the same extent as a director; and

(2) If he or she is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract except for:

(i) Liability in connection with a proceeding by or in the right of the corporation other than for expenses incurred in connection with the proceeding; or

(ii) Liability arising out of conduct that constitutes:

(A) Receipt by the officer of a financial benefit to which he or she is not entitled;

(B) An intentional infliction of harm on the corporation or the shareholders; or

(C) An intentional violation of criminal law.

(b) The provisions of subdivision (a)(2) of this section shall apply to an officer who is also a director if the basis on which he or she is made a party to the proceeding is an act or omission solely as an officer.

(c) An officer of a corporation who is not a director is entitled to mandatory indemnification under section 21-2,112 and may apply to a court under section 21-2,114 for indemnification or an advance for expenses, in each case to the

same extent to which a director may be entitled to indemnification or advance for expenses under such provisions.

Source: Laws 2014, LB749, § 116.

21-2,117 Insurance.

(MBCA 8.57) A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, member, partner, trustee, employee, or agent of another domestic or foreign corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by the individual in that capacity or arising from his or her status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to the individual against the same liability under sections 21-2,110 to 21-2,119.

Source: Laws 2014, LB749, § 117; Laws 2016, LB794, § 9.

21-2,118 Variation by corporate action; application of subchapter.

(MBCA 8.58) (a) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 21-2,111 or advance funds to pay for or reimburse expenses in accordance with section 21-2,113. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in subsection (c) of section 21-2,113 and in subsection (c) of section 21-2,115. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 21-2,113 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(b) A right of indemnification or to advances for expenses created by sections 21-2,110 to 21-2,119 or under subsection (a) of this section and in effect at the time of an act or omission shall not be eliminated or impaired with respect to such act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the directors or shareholders, adopted after the occurrence of such act or omission, unless, in the case of a right created under subsection (a) of this section, the provision creating such right and in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such act or omission has occurred.

(c) Any provision pursuant to subsection (a) of this section shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party existing at the time the merger takes effect shall be governed by subdivision (a)(4) of section 21-2,167.

(d) Subject to subsection (b) of this section, a corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to sections 21-2,110 to 21-2,119.

(e) Sections 21-2,110 to 21-2,119 do not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with appearing as a witness in a proceeding at a time when he or she is not a party.

(f) Sections 21-2,110 to 21-2,119 do not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

Source: Laws 2014, LB749, § 118.

21-2,119 Exclusivity of subpart.

(MBCA 8.59) A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by sections 21-2,110 to 21-2,119.

Source: Laws 2014, LB749, § 119.

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.

21-2,121 Judicial action.

(MBCA 8.61) (a) A transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation, may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation on the ground that the director has an interest respecting the transaction if it is not a director's conflicting interest transaction.

(b) A director's conflicting interest transaction may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation on the ground that the director has an interest respecting the transaction if:

(1) Directors' action respecting the transaction was taken in compliance with section 21-2,122 at any time;

(2) Shareholders' action respecting the transaction was taken in compliance with section 21-2,123 at any time; or

(3) The transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

Source: Laws 2014, LB749, § 121.

21-2,122 Directors' action.

(MBCA 8.62) (a) Directors' action respecting a director's conflicting interest transaction is effective for purposes of subdivision (b)(1) of section 21-2,121 if the transaction has been authorized by the affirmative vote of a majority, but no fewer than two, of the qualified directors who voted on the transaction after required disclosure by the conflicted director of information not already known by such qualified directors or after modified disclosure in compliance with subsection (b) of this section if:

(1) The qualified directors have deliberated and voted outside the presence of and without the participation by any other director; and

(2) When the action has been taken by a committee, all members of the committee were qualified directors and either (i) the committee was composed of all the qualified directors on the board of directors or (ii) the members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board.

(b) Notwithstanding subsection (a) of this section, when a transaction is a director's conflicting interest transaction only because a related person described in subdivision (5)(v) or (vi) of section 21-2,120 is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule if the conflicted director discloses to the qualified directors voting on the transaction:

(1) All information required to be disclosed that is not so violative;

(2) The existence and nature of the director's conflicting interest; and

(3) The nature of the conflicted director's duty not to disclose the confidential information.

(c) A majority, but no fewer than two, of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section.

(d) Where directors' 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, the bylaws, or a provision of law, independent action to satisfy those authorization requirements must be taken by the board of directors or a committee in which action directors who are not qualified directors may participate.

Source: Laws 2014, LB749, § 122.

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.

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.

PART 9—DOMESTICATION AND CONVERSION

SUBPART 1—PRELIMINARY PROVISIONS

21-2,125 Excluded transactions.

(MBCA 9.01) Sections 21-2,125 to 21-2,149 may not be used to effect a transaction that converts an insurance company organized on the mutual principle to one organized on a stock-share basis.

Source: Laws 2014, LB749, § 125.

21-2,126 Required approvals.

(MBCA 9.02) (a) If a domestic or foreign business corporation or eligible entity may not be a party to a merger without the approval of the Attorney General, the Department of Banking and Finance, the Department of Insurance, or the Public Service Commission, the corporation or eligible entity shall not be a party to a transaction under sections 21-2,125 to 21-2,149 without the prior approval of that agency.

(b) Property held in trust or for charitable purposes under the laws of this state by a domestic or foreign eligible entity shall not, by any transaction under sections 21-2,125 to 21-2,149, be diverted from the objects for which it was donated, granted, or devised unless and until the eligible entity obtains an order of the court specifying the disposition of the property to the extent required by and pursuant to cy pres or other nondiversion law of this state.

Source: Laws 2014, LB749, § 126.

SUBPART 2—DOMESTICATION

21-2,127 Domestication.

(MBCA 9.20) (a) A foreign business corporation may become a domestic business corporation only if the domestication is permitted by the organic law of the foreign corporation.

(b) A domestic business corporation may become a foreign business corporation if the domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved by the adoption by the corporation of a plan of domestication in the manner provided in sections 21-2,127 to 21-2,132.

(c) The plan of domestication must include:

(1) A statement of the jurisdiction in which the corporation is to be domesticated;

(2) The terms and conditions of the domestication;

(3) The manner and basis of reclassifying the shares of the corporation following its domestication into shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing; and

(4) Any desired amendments to the articles of incorporation of the corporation following its domestication.

(d) The plan of domestication may also include a provision that the plan may be amended prior to filing the document required by the laws of this state or the other jurisdiction to consummate the domestication, except that subsequent to approval of the plan by the shareholders the plan may not be amended to change:

(1) The amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, cash, or other property to be received by the shareholders under the plan;

(2) The articles of incorporation as they will be in effect immediately following the domestication, except for changes permitted by section 21-2,154 or by comparable provisions of the laws of the other jurisdiction; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

(e) Terms of a plan of domestication may be made dependent upon facts objectively ascertainable outside the plan in accordance with subsection (k) of section 21-203.

(f) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic business corporation before January 1, 2017, contains a provision applying to a merger of the corporation and the document does not refer to a domestication of the corporation, the provision shall be deemed to apply to a domestication of the corporation until such time as the provision is amended subsequent to that date.

Source: Laws 2014, LB749, § 127; Laws 2015, LB157, § 2.

21-2,128 Action on a plan of domestication.

(MBCA 9.21) In the case of a domestication of a domestic business corporation in a foreign jurisdiction:

(1) The plan of domestication must be adopted by the board of directors.

(2) After adopting the plan of domestication, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders

approve the plan unless (i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (ii) section 21-2,101 applies. If subdivision (2)(i) or (ii) of this section applies, the board must transmit to the shareholders the basis for so proceeding.

(3) The board of directors may condition its submission of the plan of domestication to the shareholders on any basis.

(4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan of domestication is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the articles of incorporation as they will be in effect immediately after the domestication.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subdivision (3) of this section, requires a greater vote or a greater number of votes to be present, approval of the plan of domestication requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and if any class or series of shares is entitled to vote as a separate group on the plan, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the domestication by that voting group exists.

(6) Subject to subdivision (7) of this section, separate voting by voting groups is required by each class or series of shares that:

(i) Are to be reclassified under the plan of domestication into other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing;

(ii) Are entitled to vote as a separate group on a provision of the plan that constitutes a proposed amendment to articles of incorporation of the corporation following its domestication that requires action by separate voting groups under section 21-2,153; or

(iii) Is entitled under the articles of incorporation to vote as a voting group to approve an amendment of the articles.

(7) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in subdivision (6)(i) of this section.

(8) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors or shareholders are parties, adopted or entered into before January 1, 2017, applies to a merger of the corporation and that document does not refer to a domestication of the corporation, the provision shall be deemed to apply to a domestication of the corporation until such time as the provision is amended subsequent to that date.

Source: Laws 2014, LB749, § 128; Laws 2015, LB157, § 3.

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.

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.

21-2,131 Effect of domestication.

(MBCA 9.24) (a) When a domestication becomes effective:

(1) The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;

(2) The liabilities of the corporation remain the liabilities of the corporation;

(3) An action or proceeding pending against the corporation continues against the corporation as if the domestication had not occurred;

(4) The articles of domestication, or the articles of incorporation attached to the articles of domestication, constitute the articles of incorporation of a foreign corporation domesticating in this state;

(5) The shares of the corporation are reclassified into shares, other securities, obligations, rights to acquire shares or other securities, or into cash or other property in accordance with the terms of the domestication, and the shareholders are entitled only to the rights provided by those terms and to any appraisal rights they may have under the organic law of the domesticating corporation; and

(6) The corporation is deemed to:

(i) Be incorporated under and subject to the organic law of the domesticated corporation for all purposes;

(ii) Be the same corporation without interruption as the domesticating corporation; and

(iii) Have been incorporated on the date the domesticating corporation was originally incorporated.

(b) When a domestication of a domestic business corporation in a foreign jurisdiction becomes effective, the foreign business corporation is deemed to agree that it will promptly pay the amount, if any, to which such shareholders are entitled under sections 21-2,171 to 21-2,183.

(c) The owner liability of a shareholder in a foreign corporation that is domesticated in this state shall be as follows:

(1) The domestication does not discharge any owner liability under the laws of the foreign jurisdiction to the extent any such owner liability arose before the effective time of the articles of domestication;

(2) The shareholder shall not have owner liability under the laws of the foreign jurisdiction for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of domestication;

(3) The provisions of the laws of the foreign jurisdiction shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (1) of this subsection, as if the domestication had not occurred; and

(4) The shareholder shall have whatever rights of contribution from other shareholders are provided by the laws of the foreign jurisdiction with respect to

any owner liability preserved by subdivision (1) of this subsection, if the domestication had not occurred.

(d) A shareholder who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the corporation as a result of its domestication in this state shall have owner liability only for those debts, obligations, or liabilities of the corporation that arise after the effective time of the articles of domestication.

Source: Laws 2014, LB749, § 131.

21-2,132 Abandonment of a domestication.

(MBCA 9.25) (a) Unless otherwise provided in a plan of domestication of a domestic business corporation, after the plan has been adopted and approved as required by sections 21-2,127 to 21-2,132, and at any time before the domestication has become effective, it may be abandoned by the board of directors without action by the shareholders.

(b) If a domestication is abandoned under subsection (a) of this section after articles of charter surrender have been filed with the Secretary of State but before the domestication has become effective, a statement that the domestication has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing prior to the effective date of the domestication. The statement shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

(c) If the domestication of a foreign business corporation in this state is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication have been filed with the Secretary of State, a statement that the domestication has been abandoned, signed by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing. The statement shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

Source: Laws 2014, LB749, § 132.

SUBPART 3—NONPROFIT CONVERSION

21-2,133 Nonprofit conversion.

(MBCA 9.30) (a) A domestic business corporation may become a domestic nonprofit corporation pursuant to a plan of nonprofit conversion.

(b) A domestic business corporation may become a foreign nonprofit corporation if the nonprofit conversion is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of nonprofit conversion, the foreign nonprofit conversion shall be approved by the adoption by the domestic business corporation of a plan of nonprofit conversion in the manner provided in sections 21-2,133 to 21-2,138.

(c) The plan of nonprofit conversion must include:

- (1) The terms and conditions of the conversion;
- (2) The manner and basis of reclassifying the shares of the corporation following its conversion into memberships, if any, or securities, obligations,

rights to acquire memberships or securities, cash, other property, or any combination of the foregoing;

(3) Any desired amendments to the articles of incorporation of the corporation following its conversion; and

(4) If the domestic business corporation is to be converted to a foreign nonprofit corporation, a statement of the jurisdiction in which the corporation will be incorporated after the conversion.

(d) The plan of nonprofit conversion may also include a provision that the plan may be amended prior to filing articles of nonprofit conversion, except that subsequent to approval of the plan by the shareholders the plan may not be amended to change:

(1) The amount or kind of memberships or securities, obligations, rights to acquire memberships or securities, cash, or other property to be received by the shareholders under the plan;

(2) The articles of incorporation as they will be in effect immediately following the conversion, except for changes permitted by section 21-2,154; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

(e) Terms of a plan of nonprofit conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with subsection (k) of section 21-203.

(f) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic business corporation before January 1, 2017, contains a provision applying to a merger of the corporation and the document does not refer to a nonprofit conversion of the corporation, the provision shall be deemed to apply to a nonprofit conversion of the corporation until such time as the provision is amended subsequent to that date.

Source: Laws 2014, LB749, § 133; Laws 2015, LB157, § 4.

21-2,134 Action on a plan of nonprofit conversion.

(MBCA 9.31) In the case of a conversion of a domestic business corporation to a domestic or foreign nonprofit corporation:

(1) The plan of nonprofit conversion must be adopted by the board of directors.

(2) After adopting the plan of nonprofit conversion, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless (i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (ii) section 21-2,101 applies. If subdivision (2)(i) or (ii) of this section applies, the board must transmit to the shareholders the basis for so proceeding.

(3) The board of directors may condition its submission of the plan of nonprofit conversion to the shareholders on any basis.

(4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder of the meeting of shareholders at which the plan of nonprofit conversion is to be submitted for approval. The

notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the articles of incorporation as they will be in effect immediately after the nonprofit conversion.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subdivision (3) of this section, requires a greater vote or a greater number of votes to be present, approval of the plan of nonprofit conversion requires the approval of each class or series of shares of the corporation voting as a separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the nonprofit conversion by that voting group exists.

(6) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors or shareholders are parties, adopted or entered into before January 1, 2017, applies to a merger, other than a provision that eliminates or limits voting or appraisal rights, and the document does not refer to a nonprofit conversion of the corporation, the provision shall be deemed to apply to a nonprofit conversion of the corporation until such time as the provision is amended subsequent to that date.

Source: Laws 2014, LB749, § 134; Laws 2015, LB157, § 5.

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.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

21-2,136 Surrender of charter upon foreign nonprofit conversion.

(MBCA 9.33) (a) Whenever a domestic business corporation has adopted and approved, in the manner required by sections 21-2,133 to 21-2,138, a plan of nonprofit conversion providing for the corporation to be converted to a foreign nonprofit corporation, 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 conversion of the corporation to a foreign nonprofit corporation;
 - (3) A statement that the foreign nonprofit conversion was duly approved by the shareholders 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 on the effective time provided in section 21-206.

Source: Laws 2014, LB749, § 136.

21-2,137 Effect of nonprofit conversion.

(MBCA 9.34) (a) When a conversion of a domestic business corporation to a domestic nonprofit corporation becomes effective:

- (1) The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;
- (2) The liabilities of the corporation remain the liabilities of the corporation;
- (3) An action or proceeding pending against the corporation continues against the corporation as if the conversion had not occurred;
- (4) The articles of incorporation of the domestic or foreign nonprofit corporation become effective;
- (5) The shares of the corporation are reclassified into memberships, securities, obligations, rights to acquire memberships or securities, or into cash or other property in accordance with the plan of conversion, and the shareholders are entitled only to the rights provided in the plan of nonprofit conversion or to any rights they may have under sections 21-2,171 to 21-2,183; and
- (6) The corporation is deemed to:
 - (i) Be a domestic nonprofit corporation for all purposes;
 - (ii) Be the same corporation without interruption as the corporation that existed prior to the conversion; and

(iii) Have been incorporated on the date that it was originally incorporated as a domestic business corporation.

(b) When a conversion of a domestic business corporation to a foreign nonprofit corporation becomes effective, the foreign nonprofit corporation is deemed to agree that it will promptly pay the amount, if any, to which such shareholders are entitled under sections 21-2,171 to 21-2,183.

(c) The owner liability of a shareholder in a domestic business corporation that converts to a domestic nonprofit corporation shall be as follows:

(1) The conversion does not discharge any owner liability of the shareholder as a shareholder of the business corporation to the extent any such owner liability arose before the effective time of the articles of nonprofit conversion;

(2) The shareholder shall not have owner liability for any debt, obligation, or liability of the nonprofit corporation that arises after the effective time of the articles of nonprofit conversion;

(3) The laws of this state shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (1) of this subsection as if the conversion had not occurred and the nonprofit corporation was still a business corporation; and

(4) The shareholder shall have whatever rights of contribution from other shareholders that are provided by the laws of this state with respect to any owner liability preserved by subdivision (1) of this subsection as if the conversion had not occurred and the nonprofit corporation were still a business corporation.

(d) A shareholder who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the nonprofit corporation shall have owner liability only for those debts, obligations, or liabilities of the nonprofit corporation that arise after the effective time of the articles of nonprofit conversion.

Source: Laws 2014, LB749, § 137.

21-2,138 Abandonment of a nonprofit conversion.

(MBCA 9.35) (a) Unless otherwise provided in a plan of nonprofit conversion of a domestic business corporation, after the plan has been adopted and approved as required by sections 21-2,133 to 21-2,138, and at any time before the nonprofit conversion has become effective, it may be abandoned by the board of directors without action by the shareholders.

(b) If a nonprofit conversion is abandoned under subsection (a) of this section after articles of nonprofit conversion or articles of charter surrender have been filed with the Secretary of State but before the nonprofit conversion has become effective, a statement that the nonprofit conversion has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing prior to the effective date of the nonprofit conversion. The statement shall take effect upon filing and the nonprofit conversion shall be deemed abandoned and shall not become effective.

Source: Laws 2014, LB749, § 138.

SUBPART 4—FOREIGN NONPROFIT DOMESTICATION
AND CONVERSION**21-2,139 Foreign nonprofit domestication and conversion.**

(MBCA 9.40) A foreign nonprofit corporation may become a domestic business corporation if the domestication and conversion is permitted by the organic law of the foreign nonprofit corporation.

Source: Laws 2014, LB749, § 139.

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.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

21-2,141 Effect of foreign nonprofit domestication and conversion.

(MBCA 9.42) (a) When a domestication and conversion of a foreign nonprofit corporation to a domestic business corporation becomes effective:

(1) The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;

(2) The liabilities of the corporation remain the liabilities of the corporation;

(3) An action or proceeding pending against the corporation continues against the corporation as if the domestication and conversion had not occurred;

(4) The articles of domestication and conversion, or the articles of incorporation attached to the articles of domestication and conversion, constitute the articles of incorporation of the corporation;

(5) Shares, other securities, obligations, rights to acquire shares or other securities of the corporation, or cash or other property shall be issued or paid as provided pursuant to the laws of the foreign jurisdiction so long as at least one share is outstanding immediately after the effective time; and

(6) The corporation is deemed to:

(i) Be a domestic corporation for all purposes;

(ii) Be the same corporation without interruption as the foreign nonprofit corporation; and

(iii) Have been incorporated on the date the foreign nonprofit corporation was originally incorporated.

(b) The owner liability of a member of a foreign nonprofit corporation that domesticates and converts to a domestic business corporation shall be as follows:

(1) The domestication and conversion does not discharge any owner liability under the laws of the foreign jurisdiction to the extent any such owner liability arose before the effective time of the articles of domestication and conversion;

(2) The member shall not have owner liability under the laws of the foreign jurisdiction for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of domestication and conversion;

(3) The provisions of the laws of the foreign jurisdiction shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (1) of this subsection as if the domestication and conversion had not occurred; and

(4) The member shall have whatever rights of contribution from other members are provided by the laws of the foreign jurisdiction with respect to any owner liability preserved by subdivision (1) of this subsection as if the domestication and conversion had not occurred.

(c) A member of a foreign nonprofit corporation who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the corporation as a result of its domestication and conversion in this state shall have owner liability only for those debts, obligations, or liabilities of the corporation that arise after the effective time of the articles of domestication and conversion.

Source: Laws 2014, LB749, § 141.

21-2,142 Abandonment of a foreign nonprofit domestication and conversion.

(MBCA 9.43) If the domestication and conversion of a foreign nonprofit corporation to a domestic business corporation is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication and conversion have been filed with the Secretary of State, a statement that the domestication and conversion has been abandoned, signed by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing. The statement shall take effect upon filing and the domestication and conversion shall be deemed abandoned and shall not become effective.

Source: Laws 2014, LB749, § 142.

SUBPART 5—ENTITY CONVERSION

21-2,143 Entity conversion authorized; definitions.

(MBCA 9.50) (a) A domestic business corporation may become a domestic unincorporated entity pursuant to a plan of entity conversion.

(b) A domestic business corporation may become a foreign unincorporated entity if the entity conversion is permitted by the laws of the foreign jurisdiction.

(c) A domestic unincorporated entity may become a domestic business corporation. If the organic law of a domestic unincorporated entity does not provide procedures for the approval of an entity conversion, the conversion shall be adopted and approved, and the entity conversion effectuated, in the same manner as a merger of the unincorporated entity. If the organic law of a domestic unincorporated entity does not provide procedures for the approval of either an entity conversion or a merger, a plan of entity conversion shall be adopted and approved, the entity conversion effectuated, and appraisal rights exercised in accordance with the procedures in sections 21-2,143 to 21-2,149 and sections 21-2,171 to 21-2,183. Without limiting the provisions of this subsection, a domestic unincorporated entity whose organic law does not provide procedures for the approval of an entity conversion shall be subject to subsection (e) of this section and subdivision (7) of section 21-2,145. For purposes of applying sections 21-2,143 to 21-2,149 and 21-2,171 to 21-2,183:

(1) The unincorporated entity, its interest holders, interests, and organic documents taken together, shall be deemed to be a domestic business corporation, shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(2) If the business and affairs of the unincorporated entity are managed by a group of persons that is not identical to the interest holders, that group shall be deemed to be the board of directors.

(d) A foreign unincorporated entity may become a domestic business corporation if the organic law of the foreign unincorporated entity authorizes it to become a corporation in another jurisdiction.

(e) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic business corporation before January 1, 2017, applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, the provision shall be deemed to apply to an entity conversion of the corporation until such time as the provision is amended subsequent to that date.

(f) As used in sections 21-2,143 to 21-2,149:

(1) Converting entity means the domestic business corporation or domestic unincorporated entity that adopts a plan of entity conversion or the foreign unincorporated entity converting to a domestic business corporation; and

(2) Surviving entity means the corporation or unincorporated entity that is in existence immediately after consummation of an entity conversion pursuant to sections 21-2,143 to 21-2,149.

Source: Laws 2014, LB749, § 143; Laws 2015, LB157, § 6.

21-2,144 Plan of entity conversion.

(MBCA 9.51) (a) A plan of entity conversion must include:

(1) A statement of the type of other entity the surviving entity will be and, if it will be a foreign other entity, its jurisdiction of organization;

(2) The terms and conditions of the conversion;

(3) The manner and basis of converting the shares of the domestic business corporation following its conversion into interests or other securities, obligations, rights to acquire interests or other securities, cash, other property, or any combination of the foregoing; and

(4) The full text, as they will be in effect immediately after consummation of the conversion, of the organic documents of the surviving entity.

(b) The plan of entity conversion may also include a provision that the plan may be amended prior to filing articles of entity conversion, except that subsequent to approval of the plan by the shareholders the plan may not be amended to change:

(1) The amount or kind of shares or other securities, interests, obligations, rights to acquire shares, other securities, or interests, cash, or other property to be received under the plan by the shareholders;

(2) The organic documents that will be in effect immediately following the conversion, except for changes permitted by a provision of the organic law of the surviving entity comparable to section 21-2,154; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

(c) Terms of a plan of entity conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with subsection (k) of section 21-203.

Source: Laws 2014, LB749, § 144.

21-2,145 Action on a plan of entity conversion.

(MBCA 9.52) In the case of an entity conversion of a domestic business corporation to a domestic or foreign unincorporated entity:

(1) The plan of entity conversion must be adopted by the board of directors.

(2) After adopting the plan of entity conversion, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan unless (i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (ii) section 21-2,101 applies. If subdivision

(2)(i) or (ii) of this section applies, the board must transmit to the shareholders the basis for so proceeding.

(3) The board of directors may condition its submission of the plan of entity conversion to the shareholders on any basis.

(4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan of entity conversion is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the organic documents as they will be in effect immediately after the entity conversion.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subdivision (3) of this section, requires a greater vote or a greater number of votes to be present, approval of the plan of entity conversion requires the approval of each class or series of shares of the corporation voting as a separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the conversion by that voting group exists.

(6) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors or shareholders are parties, adopted or entered into before January 1, 2017, applies to a merger of the corporation, other than a provision that limits or eliminates voting or appraisal rights, and the document does not refer to an entity conversion of the corporation, the provision shall be deemed to apply to an entity conversion of the corporation until such time as the provision is subsequently amended.

(7) If as a result of the conversion one or more shareholders of the corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of conversion shall require the signing, by each such shareholder, of a separate written consent to become subject to such owner liability.

Source: Laws 2014, LB749, § 145; Laws 2015, LB157, § 7.

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.

21-2,147 Surrender of charter upon conversion.

(MBCA 9.54) (a) Whenever a domestic business corporation has adopted and approved, in the manner required by sections 21-2,143 to 21-2,149, a plan of entity conversion providing for the corporation to be converted to a foreign unincorporated entity, 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 conversion of the corporation to a foreign unincorporated entity;
 - (3) A statement that the conversion was duly approved by the shareholders in the manner required by the Nebraska Model Business Corporation Act and the articles of incorporation;
 - (4) The jurisdiction under the laws of which the surviving entity will be organized; and
 - (5) If the surviving entity will be a nonfiling entity, the address of its executive office immediately after the conversion.
- (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 on the effective time provided in section 21-206.

Source: Laws 2014, LB749, § 147.

21-2,148 Effect of entity conversion.

(MBCA 9.55) (a) When a conversion under sections 21-2,143 to 21-2,149 becomes effective:

- (1) The title to all real and personal property, both tangible and intangible, of the converting entity remains in the surviving entity without reversion or impairment;
- (2) The liabilities of the converting entity remain the liabilities of the surviving entity;
- (3) An action or proceeding pending against the converting entity continues against the surviving entity as if the conversion had not occurred;
- (4) In the case of a surviving entity that is a filing entity, its articles of incorporation or public organic document and its private organic document become effective;
- (5) In the case of a surviving entity that is a nonfiling entity, its private organic document becomes effective;

(6) The shares or interests of the converting entity are reclassified into shares, interests, other securities, obligations, rights to acquire shares, interests, or other securities, or into cash or other property in accordance with the plan of conversion, and the shareholders or interest holders of the converting entity are entitled only to the rights provided to them under the terms of the conversion and to any appraisal rights they may have under the organic law of the converting entity; and

(7) The surviving entity is deemed to:

(i) Be incorporated or organized under and subject to the organic law of the converting entity for all purposes;

(ii) Be the same corporation or unincorporated entity without interruption as the converting entity; and

(iii) Have been incorporated or otherwise organized on the date that the converting entity was originally incorporated or organized.

(b) When a conversion of a domestic business corporation to a foreign other entity becomes effective, the surviving entity is deemed to agree that it will promptly pay the amount, if any, to which such shareholders are entitled under sections 21-2,171 to 21-2,183.

(c) A shareholder who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the surviving entity shall be personally liable only for those debts, obligations, or liabilities of the surviving entity that arise after the effective time of the articles of entity conversion.

(d) The owner liability of an interest holder in an unincorporated entity that converts to a domestic business corporation shall be as follows:

(1) The conversion does not discharge any owner liability under the organic law of the unincorporated entity to the extent any such owner liability arose before the effective time of the articles of entity conversion;

(2) The interest holder shall not have owner liability under the organic law of the unincorporated entity for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of entity conversion;

(3) The provisions of the organic law of the unincorporated entity shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (1) of this subsection as if the conversion had not occurred; and

(4) The interest holder shall have whatever rights of contribution from other interest holders that are provided by the organic law of the unincorporated entity with respect to any owner liability preserved by subdivision (1) of this subsection as if the conversion had not occurred.

Source: Laws 2014, LB749, § 148.

21-2,149 Abandonment of an entity conversion.

(MBCA 9.56) (a) Unless otherwise provided in a plan of entity conversion of a domestic business corporation, after the plan has been adopted and approved as required by sections 21-2,143 to 21-2,149 and at any time before the entity conversion has become effective, it may be abandoned by the board of directors without action by the shareholders.

(b) If an entity conversion is abandoned after articles of entity conversion or articles of charter surrender have been filed with the Secretary of State but before the entity conversion has become effective, a statement that the entity

conversion has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing prior to the effective date of the entity conversion. Upon filing, the statement shall take effect and the entity conversion shall be deemed abandoned and shall not become effective.

Source: Laws 2014, LB749, § 149.

PART 10—AMENDMENT OF ARTICLES OF
INCORPORATION AND BYLAWS

SUBPART 1—AMENDMENT OF ARTICLES OF INCORPORATION

21-2,150 Authority to amend.

(MBCA 10.01) (a) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation.

(b) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

Source: Laws 2014, LB749, § 150.

21-2,151 Amendment before issuance of shares.

(MBCA 10.02) If a corporation has not yet issued shares, its board of directors or its incorporators if it has no board of directors may adopt one or more amendments to the corporation's articles of incorporation.

Source: Laws 2014, LB749, § 151.

21-2,152 Amendment by board of directors and shareholders.

(MBCA 10.03) If a corporation has issued shares, an amendment to the articles of incorporation shall be adopted in the following manner:

(1) The proposed amendment must be adopted by the board of directors.

(2) Except as provided in sections 21-2,154, 21-2,156, and 21-2,157, after adopting the proposed amendment the board of directors must submit the amendment to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the amendment unless (i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (ii) section 21-2,101 applies. If subdivision (2)(i) or (ii) of this section applies, the board must transmit to the shareholders the basis for so proceeding.

(3) The board of directors may condition its submission of the amendment to the shareholders on any basis.

(4) If the amendment is required to be approved by the shareholders and the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the amendment and must contain or be accompanied by a copy of the amendment.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subdivision (3) of this section, requires a greater vote or a greater number of shares to be present, approval of the amendment requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the amendment exists, and, if any class or series of shares is entitled to vote as a separate group on the amendment, except as provided in subsection (c) of section 21-2,153, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the amendment by that voting group exists.

Source: Laws 2014, LB749, § 152.

21-2,153 Voting on amendments by voting groups.

(MBCA 10.04) (a) If a corporation has more than one class of shares outstanding, the holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by the Nebraska Model Business Corporation Act, on a proposed amendment to the articles of incorporation if the amendment would:

(1) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(2) Effect an exchange or reclassification or create the right of exchange of all or part of the shares of another class into shares of the class;

(3) Change the rights, preferences, or limitations of all or part of the shares of the class;

(4) Change the shares of all or part of the class into a different number of shares of the same class;

(5) Create a new class of shares having rights or preferences with respect to distributions that are prior or superior to the shares of the class;

(6) Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions that are prior or superior to the shares of the class;

(7) Limit or deny an existing preemptive right of all or part of the shares of the class; or

(8) Cancel or otherwise affect rights to distributions that have accumulated but not yet been authorized on all or part of the shares of the class.

(b) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (a) of this section, the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(c) If a proposed amendment that entitles the holders of two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series so affected must vote together as a single voting group on the proposed amendment unless otherwise provided in the articles of incorporation or required by the board of directors.

(d) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

Source: Laws 2014, LB749, § 153.

21-2,154 Amendment by board of directors.

(MBCA 10.05) Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval:

(1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;

(4) If the corporation has only one class of shares outstanding:

(i) To change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or

(ii) To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;

(5) To change the corporate name by substituting the word corporation, incorporated, company, limited, or the abbreviation corp., inc., co., or ltd., for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution for the name;

(6) To reflect a reduction in authorized shares, as a result of the operation of subsection (b) of section 21-251, when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;

(7) To delete a class of shares from the articles of incorporation, as a result of the operation of subsection (b) of section 21-251, when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or

(8) To make any change expressly permitted by subsection (a) or (b) of section 21-238 to be made without shareholder approval.

Source: Laws 2014, LB749, § 154.

21-2,155 Articles of amendment.

(MBCA 10.06) After an amendment to the articles of incorporation has been adopted and approved in the manner required by the Nebraska Model Business Corporation Act and by the articles of incorporation, the corporation shall deliver to the Secretary of State, for filing, articles of amendment, which shall set forth:

(1) The name of the corporation;

(2) The text of each amendment adopted, or the information required by subdivision (k)(5) of section 21-203;

(3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself, which may be made dependent upon facts

objectively ascertainable outside the articles of amendment in accordance with subdivision (k)(5) of section 21-203;

(4) The date of each amendment's adoption; and

(5) If an amendment:

(i) Was adopted by the incorporators or board of directors without shareholder approval, a statement that the amendment was duly approved by the incorporators or by the board of directors, as the case may be, and that shareholder approval was not required;

(ii) Required approval by the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by the act and by the articles of incorporation; or

(iii) Is being filed pursuant to subdivision (k)(5) of section 21-203, a statement to that effect.

Source: Laws 2014, LB749, § 155.

21-2,156 Restated articles of incorporation.

(MBCA 10.07) (a) A corporation's board of directors may restate its articles of incorporation at any time, with or without shareholder approval, to consolidate all amendments into a single document.

(b) If the restated articles include one or more new amendments that require shareholder approval, the amendments must be adopted and approved as provided in section 21-2,152.

(c) A corporation that restates its articles of incorporation shall deliver to the Secretary of State for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate which states that the restated articles consolidate all amendments into a single document and, if a new amendment is included in the restated articles, also includes the statements required under section 21-2,155.

(d) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

(e) The Secretary of State may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection (c) of this section.

Source: Laws 2014, LB749, § 156.

21-2,157 Amendment pursuant to reorganization.

(MBCA 10.08) (a) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States.

(b) The individual or individuals designated by the court shall deliver to the Secretary of State for filing articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment approved by the court;

(3) The date of the court's order or decree approving the articles of amendment;

(4) The title of the reorganization proceeding in which the order or decree was entered; and

(5) A statement that the court had jurisdiction of the proceeding under federal statute.

(c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Source: Laws 2014, LB749, § 157.

21-2,158 Effect of amendment.

(MBCA 10.09) An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

Source: Laws 2014, LB749, § 158.

SUBPART 2—AMENDMENT OF BYLAWS

21-2,159 Amendment by board of directors or shareholders.

(MBCA 10.20) (a) A corporation's shareholders may amend or repeal the corporation's bylaws.

(b) A corporation's board of directors may amend or repeal the corporation's bylaws, unless:

(1) The articles of incorporation or section 21-2,160 reserves that power exclusively to the shareholders in whole or part; or

(2) Except as provided in subsection (d) of section 21-224, the shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or reinstate that bylaw.

Source: Laws 2014, LB749, § 159.

21-2,160 Bylaw increasing quorum or voting requirement for directors.

(MBCA 10.21) (a) A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

(1) If originally adopted by the shareholders, only by the shareholders unless the bylaw otherwise provides; or

(2) If adopted by the board of directors, either by the shareholders or by the board of directors.

(b) A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(c) Action by the board of directors under subsection (a) of this section to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted

by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

Source: Laws 2014, LB749, § 160.

PART 11—MERGERS AND SHARE EXCHANGES

21-2,161 Definitions.

(MBCA 11.01) As used in sections 21-2,161 to 21-2,168:

- (1) Merger means a business combination pursuant to section 21-2,162.
- (2) Party to a merger or party to a share exchange means any domestic or foreign corporation or eligible entity that will:
 - (i) Merge under a plan of merger;
 - (ii) Acquire shares or eligible interests of another corporation or an eligible entity in a share exchange; or
 - (iii) Have all of its shares or eligible interests or all of one or more classes or series of its shares or eligible interests acquired in a share exchange.
- (3) Share exchange means a business combination pursuant to section 21-2,163.
- (4) Survivor in a merger means the corporation or eligible entity into which one or more other corporations or eligible entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

Source: Laws 2014, LB749, § 161.

21-2,162 Merger.

(MBCA 11.02) (a) One or more domestic business corporations may merge with one or more domestic or foreign business corporations or eligible entities pursuant to a plan of merger or two or more foreign business corporations or domestic or foreign eligible entities may merge into a new domestic business corporation to be created in the merger in the manner provided in sections 21-2,161 to 21-2,168.

(b) A foreign business corporation, or a foreign eligible entity, may be a party to a merger with a domestic business corporation or may be created by the terms of the plan of merger only if the merger is permitted by the organic law of the foreign business corporation or eligible entity.

(c) If the organic law of a domestic eligible entity does not provide procedures for the approval of a merger, a plan of merger may be adopted and approved, the merger effectuated, and appraisal rights exercised in accordance with the procedures in sections 21-2,161 to 21-2,168 and 21-2,171 to 21-2,183. For the purposes of applying sections 21-2,161 to 21-2,168 and 21-2,171 to 21-2,183:

- (1) The eligible entity, its members or interest holders, eligible interests, and organic documents taken together shall be deemed to be a domestic business corporation, shareholders, shares, and articles of incorporation, respectively and vice versa as the context may require; and
- (2) If the business and affairs of the eligible entity are managed by a group of persons that is not identical to the members or interest holders, that group shall be deemed to be the board of directors.
- (d) The plan of merger must include:

(1) The name of each domestic or foreign business corporation or eligible entity that will merge and the name of the domestic or foreign business corporation or eligible entity that will be the survivor of the merger;

(2) The terms and conditions of the merger;

(3) The manner and basis of converting the shares of each merging domestic or foreign business corporation and eligible interests of each merging domestic or foreign eligible entity into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities, or eligible interests, cash, other property, or any combination of the foregoing;

(4) The articles of incorporation of any domestic or foreign business or nonprofit corporation or the organic documents of any domestic or foreign unincorporated entity to be created by the merger or, if a new domestic or foreign business or nonprofit corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or organic documents; and

(5) Any other provisions required by the laws under which any party to the merger is organized or by which it is governed or by the articles of incorporation or organic document of any such party.

(e) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with subsection (k) of section 21-203.

(f) The plan of merger may also include a provision that the plan may be amended prior to filing articles of merger, but if the shareholders of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to change:

(1) The amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities, or eligible interests, cash, or other property to be received under the plan by the shareholders of or owners of eligible interests in any party to the merger;

(2) The articles of incorporation of any corporation or the organic documents of any unincorporated entity that will survive or be created as a result of the merger, except for changes permitted by section 21-2,154 or by comparable provisions of the organic laws of any such foreign corporation or domestic or foreign unincorporated entity; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(g) Property held in trust or for charitable purposes under the laws of this state by a domestic or foreign eligible entity shall not be diverted by a merger from the objects for which it was donated, granted, or devised unless and until the eligible entity obtains an order of the court specifying the disposition of the property to the extent required by and pursuant to cy pres or other nondiversion law of this state.

Source: Laws 2014, LB749, § 162.

21-2,163 Share exchange.

(MBCA 11.03) (a) Through a share exchange:

(1) A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation, or all of the interests of one or more classes or series of interests of a domestic or foreign other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing pursuant to a plan of share exchange; or

(2) All of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or other entity in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing pursuant to a plan of share exchange.

(b) A foreign corporation or eligible entity may be a party to a share exchange only if the share exchange is permitted by the organic law of the corporation or other entity.

(c) If the organic law of a domestic other entity does not provide procedures for the approval of a share exchange, a plan of share exchange may be adopted and approved and the share exchange effectuated in accordance with the procedures, if any, for a merger. If the organic law of a domestic other entity does not provide procedures for the approval of either a share exchange or a merger, a plan of share exchange may be adopted and approved, the share exchange effectuated, and appraisal rights exercised, in accordance with the procedures in sections 21-2,161 to 21-2,168 and 21-2,171 to 21-2,183. For the purposes of applying sections 21-2,161 to 21-2,168 and 21-2,171 to 21-2,183:

(1) The other entity, its interest holders, interests, and organic documents taken together shall be deemed to be a domestic business corporation, shareholders, shares, and articles of incorporation, respectively and vice versa as the context may require; and

(2) If the business and affairs of the other entity are managed by a group of persons that is not identical to the interest holders, that group shall be deemed to be the board of directors.

(d) The plan of share exchange must include:

(1) The name of each corporation or other entity whose shares or interests will be acquired and the name of the corporation or other entity that will acquire those shares or interests;

(2) The terms and conditions of the share exchange;

(3) The manner and basis of exchanging shares of a corporation or interests in an other entity whose shares or interests will be acquired under the share exchange into shares or other securities, interests, obligations, rights to acquire shares, other securities, or interests, cash, other property, or any combination of the foregoing; and

(4) Any other provisions required by the laws under which any party to the share exchange is organized or by the articles of incorporation or organic document of any such party.

(e) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with subsection (k) of section 21-203.

(f) The plan of share exchange may also include a provision that the plan may be amended prior to filing articles of share exchange, but if the shareholders of a domestic corporation that is a party to the share exchange are required or

permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to change:

(1) The amount or kind of shares or other securities, interests, obligations, rights to acquire shares, other securities, or interests, cash, or other property to be issued by the corporation or to be received under the plan by the shareholders or owners of interests in any party to the share exchange; or

(2) Any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(g) This section does not limit the power of a domestic corporation to acquire shares of another corporation or interests in another entity in a transaction other than a share exchange.

Source: Laws 2014, LB749, § 163.

21-2,164 Action on a plan of merger or share exchange.

(MBCA 11.04) In the case of a domestic corporation that is a party to a merger or share exchange:

(1) The plan of merger or share exchange must be adopted by the board of directors.

(2) Except as provided in subdivision (8) of this section and in section 21-2,165, after adopting the plan of merger or share exchange the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan unless (i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (ii) section 21-2,101 applies. If either subdivision (2)(i) or (ii) of this section applies, the board must transmit to the shareholders the basis for so proceeding.

(3) The board of directors may condition its submission of the plan of merger or share exchange to the shareholders on any basis.

(4) If the plan of merger or share exchange is required to be approved by the shareholders and if the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or other entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of that corporation or other entity. If the corporation is to be merged into a corporation or other entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organizational documents of the new corporation or other entity.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subdivision (3) of this section requires a greater vote or a greater number of votes to be present, approval of the plan of merger or share exchange requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and if any class or series of shares is entitled to vote as a separate

group on the plan of merger or share exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the merger or share exchange by that voting group is present.

(6) Subject to subdivision (7) of this section, separate voting by voting groups is required:

(i) On a plan of merger, by each class or series of shares that:

(A) Are to be converted under the plan of merger into other securities, interests, obligations, rights to acquire shares, other securities, or interests, cash, other property, or any combination of the foregoing; or

(B) Are entitled to vote as a separate group on a provision in the plan that constitutes a proposed amendment to articles of incorporation of a surviving corporation, that requires action by separate voting groups under section 21-2,153;

(ii) On a plan of share exchange, by each class or series of shares included in the exchange with each class or series constituting a separate voting group; and

(iii) On a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.

(7) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in subdivisions (6)(i)(A) and (6)(ii) of this section as to any class or series of shares, except for a transaction that (i) includes what is or would be, if the corporation were the surviving corporation, an amendment subject to subdivision (6)(i)(B) of this section and (ii) will effect no significant change in the assets of the resulting entity, including all parents and subsidiaries on a consolidated basis.

(8) Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange is not required if:

(i) The corporation will survive the merger or is the acquiring corporation in a share exchange;

(ii) Except for amendments permitted by section 21-2,154, its articles of incorporation will not be changed;

(iii) Each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, limitations, and relative rights, immediately after the effective date of change; and

(iv) The issuance in the merger or share exchange of shares or other securities convertible into or rights exercisable for shares does not require a vote under subsection (f) of section 21-242.

(9) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of merger or share exchange shall require the execution by each such shareholder of a separate written consent to become subject to such owner liability.

Source: Laws 2014, LB749, § 164.

21-2,165 Merger between parent and subsidiary or between subsidiaries.

(MBCA 11.05) (a) A domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation that carry at least ninety percent of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power may merge the subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, without the approval of the board of directors or shareholders of the subsidiary unless the articles of incorporation of any of the corporations otherwise provide, and unless, in the case of a foreign subsidiary, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized.

(b) If under subsection (a) of this section approval of a merger by the subsidiary's shareholders is not required, the parent corporation shall within ten days after the effective date of the merger notify each of the subsidiary's shareholders that the merger has become effective.

(c) Except as provided in subsections (a) and (b) of this section, a merger between a parent and a subsidiary shall be governed by the provisions of sections 21-2,161 to 21-2,168 applicable to mergers generally.

Source: Laws 2014, LB749, § 165.

21-2,166 Articles of merger or share exchange.

(MBCA 11.06) (a) After a plan of merger or share exchange has been adopted and approved as required by the Nebraska Model Business Corporation Act, articles of merger or share exchange shall be signed on behalf of each party to the merger or share exchange by any officer or other duly authorized representative. The articles shall set forth:

- (1) The names of the parties to the merger or share exchange;
- (2) If the articles of incorporation of the survivor of a merger are amended, or if a new corporation is created as a result of a merger, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation;
- (3) If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan 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 act and the articles of incorporation;
- (4) If the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement to that effect; and
- (5) As to each foreign corporation or eligible entity that was a party to the merger or share exchange, a statement that the participation of the foreign corporation or eligible entity was duly authorized as required by the organic law of the corporation or eligible entity.

(b) Articles of merger or share exchange shall be delivered to the Secretary of State for filing by the survivor of the merger or the acquiring corporation in a share exchange and shall take effect at the effective time provided in section 21-206. Articles of merger or share exchange filed under this section may be combined with any filing required under the organic law of any domestic

eligible entity involved in the transaction if the combined filing satisfies the requirements of both this section and the other organic law.

Source: Laws 2014, LB749, § 166.

21-2,167 Effect of merger or share exchange.

(MBCA 11.07) (a) When a merger becomes effective:

(1) The corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;

(2) The separate existence of every corporation or eligible entity that is merged into the survivor ceases;

(3) All property owned by and every contract right possessed by each corporation or eligible entity that merges into the survivor is vested in the survivor without reversion or impairment;

(4) All liabilities of each corporation or eligible entity that is merged into the survivor are vested in the survivor;

(5) The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(6) The articles of incorporation or organic documents of the survivor are amended to the extent provided in the plan of merger;

(7) The articles of incorporation or organic documents of a survivor that is created by the merger become effective; and

(8) The shares of each corporation that is a party to the merger and the interests in an eligible entity that is a party to a merger that are to be converted under the plan of merger into shares, eligible interests, obligations, rights to acquire securities, other securities, or eligible interests, cash, other property, or any combination of the foregoing, are converted, and the former holders of such shares or eligible interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under sections 21-2,171 to 21-2,183 or the organic law of the eligible entity.

(b) When a share exchange becomes effective, the shares of each domestic corporation that are to be exchanged for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under sections 21-2,171 to 21-2,183.

(c) A person who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of any entity as a result of a merger or share exchange shall have owner liability only to the extent provided in the organic law of the entity and only for those debts, obligations, and liabilities that arise after the effective time of the articles of merger or share exchange.

(d) Upon a merger becoming effective, a foreign corporation or a foreign eligible entity that is the survivor of the merger is deemed to agree that it will promptly pay the amount, if any, to which such shareholders are entitled under sections 21-2,171 to 21-2,183.

(e) The effect of a merger or share exchange on the owner liability of a person who had owner liability for some or all of the debts, obligations, or liabilities of a party to the merger or share exchange shall be as follows:

(1) The merger or share exchange does not discharge any owner liability under the organic law of the entity in which the person was a shareholder or interest holder to the extent any such owner liability arose before the effective time of the articles of merger or share exchange;

(2) The person shall not have owner liability under the organic law of the entity in which the person was a shareholder or interest holder prior to the merger or share exchange for any debt, obligation, or liability that arises after the effective time of the articles of merger or share exchange;

(3) The provisions of the organic law of any entity for which the person had owner liability before the merger or share exchange shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (1) of this subsection as if the merger or share exchange had not occurred; and

(4) The person shall have whatever rights of contribution from other persons provided by the organic law of the entity for which the person had owner liability with respect to any owner liability preserved by subdivision (1) of this subsection as if the merger or share exchange had not occurred.

Source: Laws 2014, LB749, § 167.

21-2,168 Abandonment of a merger or share exchange.

(MBCA 11.08) (a) Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign business corporation or a domestic or foreign eligible entity that is a party to a merger or a share exchange is organized or by which it is governed, after the plan has been adopted and approved as required by sections 21-2,161 to 21-2,168, and at any time before the merger or share exchange has become effective, it may be abandoned by a domestic business corporation that is a party thereto without action by its shareholders in accordance with any procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors, subject to any contractual rights of other parties to the merger or share exchange.

(b) If a merger or share exchange is abandoned under subsection (a) of this section after articles of merger or share exchange have been filed with the Secretary of State but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, signed on behalf of a party to the merger or share exchange by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing prior to the effective date of the merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

Source: Laws 2014, LB749, § 168.

PART 12—DISPOSITION OF ASSETS

21-2,169 Disposition of assets not requiring shareholder approval.

(MBCA 12.01) No approval of the shareholders of a corporation is required, unless the articles of incorporation otherwise provide:

(1) To sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;

(2) To mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of business;

(3) To transfer any or all of the corporation's assets to one or more corporations or other entities all of the shares or interests of which are owned by the corporation; or

(4) To distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.

Source: Laws 2014, LB749, § 169.

21-2,170 Shareholder approval of certain dispositions.

(MBCA 12.02) (a) A sale, lease, exchange, or other disposition of assets, other than a disposition described in section 21-2,169, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains a business activity that represented at least twenty-five percent of total assets at the end of the most recently completed fiscal year, and twenty-five percent of either income from continuing operations before taxes or revenue from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the corporation will conclusively be deemed to have retained a significant continuing business activity.

(b) A disposition that requires approval of the shareholders under subsection (a) of this section shall be initiated by a resolution by the board of directors authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless (1) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (2) section 21-2,101 applies. If either subdivision (b)(1) or (2) of this section applies, the board of directors shall transmit to the shareholders the basis for so proceeding.

(c) The board of directors may condition its submission of a disposition to the shareholders under subsection (b) of this section on any basis.

(d) If a disposition is required to be approved by the shareholders under subsection (a) of this section and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the disposition and shall contain a description of the disposition, including the terms and conditions thereof and the consideration to be received by the corporation.

(e) Unless the articles of incorporation or the board of directors acting pursuant to subsection (c) of this section requires a greater vote or a greater number of votes to be present, the approval of a disposition by the shareholders shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the disposition exists.

(f) After a disposition has been approved by the shareholders under subsection (b) of this section and at any time before the disposition has been consummated, it may be abandoned by the corporation without action by the shareholders, subject to any contractual rights of other parties to the disposition.

(g) A disposition of assets in the course of dissolution under sections 21-2,184 to 21-2,202 is not governed by this section.

(h) The assets of a direct or indirect consolidated subsidiary shall be deemed the assets of the parent corporation for the purposes of this section.

Source: Laws 2014, LB749, § 170.

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.

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 Compa-

ny 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.

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.

SUBPART 2—PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS**21-2,174 Notice of appraisal rights.**

(MBCA 13.20) (a) When any corporate action specified in subsection (a) of section 21-2,172 is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that the shareholders are, are not, or may be entitled to assert appraisal rights under sections 21-2,171 to 21-2,183. If the corporation concludes that appraisal rights are or may be available, a copy of sections 21-2,171 to 21-2,183 must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(b) In a merger pursuant to section 21-2,165, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice must be sent within ten days after the corporate action became effective and include the materials described in section 21-2,176.

(c) When any corporate action specified in subsection (a) of section 21-2,172 is to be approved by written consent of the shareholders pursuant to section 21-256:

(1) Written notice that appraisal rights are, are not, or may be available must be sent to each record shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of sections 21-2,171 to 21-2,183; and

(2) Written notice that appraisal rights are, are not, or may be available must be delivered together with the notice to nonconsenting and nonvoting share-

holders required by subsections (e) and (f) of section 21-256, may include the materials described in section 21-2,176, and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of sections 21-2,171 to 21-2,183.

(d) When corporate action described in subsection (a) of section 21-2,172 is proposed or a merger pursuant to section 21-2,165 is effected, the notice referred to in subsection (a) or (c) of this section, if the corporation concludes that appraisal rights are or may be available, and in subsection (b) of this section shall be accompanied by:

(1) The annual financial statements specified in subsection (a) of section 21-2,227 of the corporation that issued the shares that may be subject to appraisal, which shall be as of a date ending not more than sixteen months before the date of the notice and shall comply with subsection (b) of section 21-2,227, except that if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

(2) The latest available quarterly financial statements of such corporation, if any.

(e) The right to receive the information described in subsection (d) of this section may be waived in writing by a shareholder before or after the corporate action.

Source: Laws 2014, LB749, § 174.

21-2,175 Notice of intent to demand payment and consequences of voting or consenting.

(MBCA 13.21) (a) If a corporate action specified in subsection (a) of section 21-2,172 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(1) Must deliver to the corporation, before the vote is taken, written notice of the shareholder's intent to demand payment if the proposed action is effectuated; and

(2) Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

(b) If a corporate action specified in subsection (a) of section 21-2,172 is to be approved by less than unanimous written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares must not sign a consent in favor of the proposed action with respect to that class or series of shares.

(c) A shareholder who fails to satisfy the requirements of subsection (a) or (b) of this section is not entitled to payment under sections 21-2,171 to 21-2,183.

Source: Laws 2014, LB749, § 175.

21-2,176 Appraisal notice and form.

(MBCA 13.22) (a) If a corporate action requiring appraisal rights under subsection (a) of section 21-2,172 becomes effective, the corporation must send a written appraisal notice and form required by subdivision (b)(1) of this section to all shareholders who satisfy the requirements of subsection (a) or (b) of section 21-2,175. In the case of a merger under section 21-2,165, the parent

must deliver an appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(b) The appraisal notice must be delivered no earlier than the date the corporate action specified in subsection (a) of section 21-2,172 became effective, and no later than ten days after such date, and must:

(1) Supply a form that (i) specifies the first date of any announcement to shareholders made prior to the date the corporate action became effective of the principal terms of the proposed corporate action, (ii) if such announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date, and (iii) requires the shareholder asserting appraisal rights to certify that such shareholder did not vote for or consent to the transaction;

(2) State:

(i) Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subdivision (2)(ii) of this subsection;

(ii) A date by which the corporation must receive the form, which date may not be fewer than forty nor more than sixty days after the date the appraisal notice under subsection (a) of this section is sent, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date;

(iii) The corporation's estimate of the fair value of the shares;

(iv) That, if requested in writing, the corporation will provide, to the shareholder so requesting within ten days after the date specified in subdivision (2)(ii) of this subsection, the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and

(v) The date by which the notice to withdraw under section 21-2,177 must be received, which date must be within twenty days after the date specified in subdivision (2)(ii) of this subsection; and

(3) Be accompanied by a copy of sections 21-2,171 to 21-2,183.

Source: Laws 2014, LB749, § 176.

21-2,177 Perfection of rights; right to withdraw.

(MBCA 13.23) (a) A shareholder who receives notice pursuant to section 21-2,176 and who wishes to exercise appraisal rights must sign and return the form sent by the corporation and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to subdivision (b)(2)(ii) of section 21-2,176. In addition, if applicable, the shareholder must certify on the form whether the beneficial owner of such shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to subdivision (b)(1) of section 21-2,176. If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under section 21-2,179. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed forms, that shareholder loses all rights as a shareholder unless the shareholder withdraws pursuant to subsection (b) of this section.

(b) A shareholder who has complied with subsection (a) of this section may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to subdivision (b)(2)(v) of section 21-2,176. A shareholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(c) A shareholder who does not sign and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in subsection (b) of section 21-2,176, shall not be entitled to payment under sections 21-2,171 to 21-2,183.

Source: Laws 2014, LB749, § 177.

21-2,178 Payment.

(MBCA 13.24) (a) Except as provided in section 21-2,179, within thirty days after the form required by subdivision (b)(2)(ii) of section 21-2,176 is due, the corporation shall pay in cash to those shareholders who complied with subsection (a) of section 21-2,177 the amount the corporation estimates to be the fair value of their shares, plus interest.

(b) The payment to each shareholder pursuant to subsection (a) of this section must be accompanied by:

(1)(i) The annual financial statements specified in subsection (a) of section 21-2,227 of the corporation that issued the shares to be appraised, which shall be of a date ending not more than sixteen months before the date of payment and shall comply with subsection (b) of section 21-2,227, except that if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information, and (ii) the latest available quarterly financial statements of such corporation, if any;

(2) A statement of the corporation's estimate of the fair value of the shares, which estimate must equal or exceed the corporation's estimate given pursuant to subdivision (b)(2)(iii) of section 21-2,176; and

(3) A statement that shareholders described in subsection (a) of this section have the right to demand further payment under section 21-2,180 and that if any such shareholder does not do so within the time period specified therein, such shareholder shall be deemed to have accepted such payment in full satisfaction of the corporation's obligations under sections 21-2,171 to 21-2,183.

Source: Laws 2014, LB749, § 178.

21-2,179 After-acquired shares.

(MBCA 13.25) (a) A corporation may elect to withhold payment required by section 21-2,178 from any shareholder who was required to, but did not, certify that beneficial ownership of all the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to subdivision (b)(1) of section 21-2,176.

(b) If the corporation elected to withhold payment under subsection (a) of this section, it must, within thirty days after the form required by subdivision (b)(2)(ii) of section 21-2,176 is due, notify all shareholders who are described in subsection (a) of this section:

(1) Of the information required by subdivision (b)(1) of section 21-2,178;

(2) Of the corporation's estimate of fair value pursuant to subdivision (b)(2) of section 21-2,178;

(3) That they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under section 21-2,180;

(4) That those shareholders who wish to accept such offer must so notify the corporation of their acceptance of the corporation's offer within thirty days after receiving the offer; and

(5) That those shareholders who do not satisfy the requirements for demanding appraisal under section 21-2,180 shall be deemed to have accepted the corporation's offer.

(c) Within ten days after receiving the shareholder's acceptance pursuant to subsection (b) of this section, the corporation must pay in cash the amount it offered under subdivision (b)(2) of this section to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(d) Within forty days after sending the notice described in subsection (b) of this section, the corporation must pay in cash the amount it offered to pay under subdivision (b)(2) of this section to each shareholder described in subdivision (b)(5) of this section.

Source: Laws 2014, LB749, § 179.

21-2,180 Procedure if shareholder dissatisfied with payment or offer.

(MBCA 13.26) (a) A shareholder paid pursuant to section 21-2,178 who is dissatisfied with the amount of the payment must notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus interest, less any payment under section 21-2,178. A shareholder offered payment under section 21-2,179 who is dissatisfied with that offer must reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares plus interest.

(b) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (a) of this section within thirty days after receiving the corporation's payment or offer of payment under section 21-2,178 or 21-2,179, respectively, waives the right to demand payment under this section and shall be entitled only to the payment made or offered pursuant to those respective sections.

Source: Laws 2014, LB749, § 180.

SUBPART 3—JUDICIAL APPRAISAL OF SHARES

21-2,181 Court action.

(MBCA 13.30) (a) If a shareholder makes demand for payment under section 21-2,180 which remains unsettled, the corporation shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to section 21-2,180 plus interest.

(b) The corporation shall commence the proceeding in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the principal office or registered office of the domestic corporation merged with the foreign corporation was located at the time of the transaction.

(c) The corporation shall make all shareholders, whether or not residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) of this section is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(e) Each shareholder made a party to the proceeding is entitled to judgment (1) for the amount, if any, by which the court finds the fair value of the shareholder's shares, plus interest, exceeds the amount paid by the corporation to the shareholder for such shares or (2) for the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under section 21-2,179.

Source: Laws 2014, LB749, § 181.

21-2,182 Court costs and expenses.

(MBCA 13.31) (a) The court in an appraisal proceeding commenced under section 21-2,181 shall determine all court costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the court costs against the corporation, except that the court may assess court costs against all or some of the shareholders demanding appraisal, in amounts which the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by sections 21-2,171 to 21-2,183.

(b) The court in an appraisal proceeding may also assess the expenses of the respective parties in amounts the court finds equitable:

(1) Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of section 21-2,174, 21-2,176, 21-2,178, or 21-2,179; or

(2) Against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds the party against whom expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by sections 21-2,171 to 21-2,183.

(c) If the court in an appraisal proceeding finds that the expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated and that such expenses should not be assessed against the corporation,

the court may direct that such expenses be paid out of the amounts awarded the shareholders who were benefited.

(d) To the extent the corporation fails to make a required payment pursuant to section 21-2,178, 21-2,179, or 21-2,180, the shareholder may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the corporation all expenses of the suit.

Source: Laws 2014, LB749, § 182.

SUBPART 4—OTHER REMEDIES

21-2,183 Other remedies limited.

(MBCA 13.40) (a) The legality of a proposed or completed corporate action described in subsection (a) of section 21-2,172 may not be contested, nor may the corporate action be enjoined, set aside, or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

(b) Subsection (a) of this section does not apply to a corporate action that:

(1) Was not authorized and approved in accordance with the applicable provisions of:

(i) Sections 21-2,125 to 21-2,170;

(ii) The articles of incorporation or bylaws; or

(iii) The resolution of the board of directors authorizing the corporate action;

(2) Was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

(3) Is an interested transaction, unless it has been recommended by the board of directors in the same manner as is provided in section 21-2,122 and has been approved by the shareholders in the same manner as is provided in section 21-2,123 as if the interested transaction were a director's conflicting interest transaction; or

(4) Is approved by less than unanimous consent of the voting shareholders pursuant to section 21-256 if:

(i) The challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least ten days before the corporate action was effected; and

(ii) The proceeding challenging the corporate action is commenced within ten days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

Source: Laws 2014, LB749, § 183.

PART 14—DISSOLUTION

SUBPART 1—VOLUNTARY DISSOLUTION

21-2,184 Dissolution by incorporators or initial directors.

(MBCA 14.01) A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the Secretary of State for filing articles of dissolution that set forth:

- (1) The name of the corporation;
- (2) The date of its incorporation;
- (3) Either (i) that none of the corporation's shares has been issued or (ii) that the corporation has not commenced business;
- (4) That no debt of the corporation remains unpaid;
- (5) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and
- (6) That a majority of the incorporators or initial directors authorized the dissolution.

Source: Laws 2014, LB749, § 184.

21-2,185 Dissolution by board of directors and shareholders.

(MBCA 14.02) (a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

(1) The board of directors must recommend dissolution to the shareholders unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation or (ii) section 21-2,101 applies. If either subdivision (1)(i) or (ii) of this subsection applies, it must communicate the basis for so proceeding; and

(2) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e) of this section.

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(e) Unless the articles of incorporation or the board of directors acting pursuant to subsection (c) of this section require a greater vote, a greater number of shares to be present, or a vote by voting groups, adoption of the proposal to dissolve shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists.

Source: Laws 2014, LB749, § 185.

21-2,186 Articles of dissolution.

(MBCA 14.03) (a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State for filing articles of dissolution setting forth:

- (1) The name of the corporation;
- (2) The date dissolution was authorized; and
- (3) If dissolution was approved by the shareholders, a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by the Nebraska Model Business Corporation Act and by the articles of incorporation.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

(c) For purposes of sections 21-2,184 to 21-2,192, dissolved corporation means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

Source: Laws 2014, LB749, § 186.

21-2,187 Revocation of dissolution.

(MBCA 14.04) (a) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Secretary of State for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

- (1) The name of the corporation;
- (2) The effective date of the dissolution that was revoked;
- (3) The date that the revocation of dissolution was authorized;
- (4) If the corporation's board of directors, or incorporators, revoked the dissolution, a statement to that effect;
- (5) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
- (6) If shareholder action was required to revoke the dissolution, the information required by subdivision (a)(3) of section 21-2,186.

(d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

Source: Laws 2014, LB749, § 187.

21-2,188 Effect of dissolution.

(MBCA 14.05) (a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

- (1) Collecting its assets;
- (2) Disposing of its properties that will not be distributed in kind to its shareholders;
- (3) Discharging or making provision for discharging its liabilities;
- (4) Distributing its remaining property among its shareholders according to their interests; and

(5) Doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:

- (1) Transfer title to the corporation's property;
- (2) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
- (3) Subject its directors or officers to standards of conduct different from those prescribed in sections 21-284 to 21-2,124;
- (4) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
- (5) Prevent commencement of a proceeding by or against the corporation in its corporate name;
- (6) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
- (7) Terminate the authority of the registered agent of the corporation.

Source: Laws 2014, LB749, § 188.

21-2,189 Known claims against dissolved corporation.

(MBCA 14.06) (a) A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.

(b) The written notice must:

- (1) Describe information that must be included in a claim;
- (2) Provide a mailing address where a claim may be sent;
- (3) State the deadline, which may not be fewer than one hundred twenty days after the effective date of the written notice, by which the dissolved corporation must receive the claim; and
- (4) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

- (1) If a claimant who was given written notice under subsection (b) of this section does not deliver the claim to the dissolved corporation by the deadline; or
- (2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days after the effective date of the rejection notice.

(d) For purposes of this section, claim does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Source: Laws 2014, LB749, § 189.

21-2,190 Other claims against dissolved corporation.

(MBCA 14.07) (a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(b) The notice must:

(1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office, or, if none in this state, its registered office, is or was last located;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within three years after the publication date of the newspaper notice:

(1) A claimant who was not given written notice under section 21-2,189;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on; or

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim that is not barred by subsection (b) of section 21-2,189 or subsection (c) of this section may be enforced:

(1) Against the dissolved corporation to the extent of its undistributed assets; or

(2) Except as provided in subsection (d) of section 21-2,191, if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

Source: Laws 2014, LB749, § 190.

21-2,191 Court proceedings.

(MBCA 14.08) (a) A dissolved corporation that has published a notice under section 21-2,190 may file an application with the district court of the county where the dissolved corporation's principal office, or, if none in this state, its registered office, is located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection (c) of section 21-2,190.

(b) Within ten days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section.

The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

(d) Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection (a) of this section shall satisfy the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation, or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a shareholder who received assets in liquidation.

Source: Laws 2014, LB749, § 191.

21-2,192 Director duties.

(MBCA 14.09) (a) Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions of assets to shareholders after payment or provision for claims.

(b) Directors of a dissolved corporation which has disposed of claims under section 21-2,189, 21-2,190, or 21-2,191 shall not be liable for breach of subsection (a) of this section with respect to claims against the dissolved corporation that are barred or satisfied under section 21-2,189, 21-2,190, or 21-2,191.

Source: Laws 2014, LB749, § 192.

SUBPART 2—ADMINISTRATIVE DISSOLUTION

21-2,193 Grounds for administrative dissolution.

(MBCA 14.20) The Secretary of State may commence a proceeding under section 21-2,194 to administratively dissolve a corporation if:

- (1) The corporation is without a registered agent or registered office in this state for sixty days or more;
- (2) The corporation does not notify the Secretary of State within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or
- (3) The corporation's period of duration stated in its articles of incorporation expires.

Source: Laws 2014, LB749, § 193.

21-2,194 Procedure for and effect of administrative dissolution.

(MBCA 14.21) (a) If the Secretary of State determines that one or more grounds exist under section 21-2,193 for dissolving a corporation, the Secretary of State shall serve the corporation with written notice of such determination under section 21-236.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty days after service of the notice is perfected under section 21-236, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under section 21-236.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 21-2,188 and notify claimants under sections 21-2,189 and 21-2,190.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

Source: Laws 2014, LB749, § 194.

21-2,195 Reinstatement following administrative dissolution.

(MBCA 14.22) (a) A corporation administratively dissolved under section 21-2,194 may apply to the Secretary of State for reinstatement within five years after the effective date of dissolution. The application must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(3) State that the corporation's name satisfies the requirements of section 21-230.

(b) If the Secretary of State determines (1) that the application for reinstatement contains the information required by subsection (a) of this section and that the information is correct and (2) that the corporation has paid to the Secretary of State all delinquent fees and has delivered to the Secretary of State a properly executed and signed biennial report, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites such determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-236.

(c) A corporation that has been administratively dissolved under section 21-2,194 for more than five years may apply to the Secretary of State for late reinstatement. The application, along with the fee set forth in section 21-205, must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) State that the corporation's name satisfies the requirements of section 21-230;

(4) State that a legitimate reason exists for reinstatement and what such legitimate reason is; and

(5) State that such reinstatement does not constitute fraud on the public.

(d) If the Secretary of State determines (1) that the application for late reinstatement contains the information required by subsection (c) of this section and that the information is correct and (2) that the corporation has paid to the Secretary of State all delinquent fees and has delivered to the Secretary of State a properly executed and signed biennial report, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of late reinstatement that recites such determination and the effective date of reinstatement.

ment, file the original of the certificate, and serve a copy on the corporation under section 21-236.

(e) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

Source: Laws 2014, LB749, § 195; Laws 2015, LB279, § 4.

21-2,196 Appeal from denial of reinstatement.

(MBCA 14.23) (a) If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution, the Secretary of State shall serve the corporation under section 21-236 with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

(c) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 2014, LB749, § 196.

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.

21-2,198 Procedure for judicial dissolution.

(MBCA 14.31) (a) Venue for a proceeding by the Attorney General to dissolve a corporation lies in the district court of Lancaster County. Venue for a proceeding brought by any other party named in subsection (a) of section 21-2,197 lies in the district court of the county where a corporation's principal office, or, if none in this state, its registered office, is or was last located.

(b) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(d) Within ten days of the commencement of a proceeding to dissolve a corporation under subdivision (a)(2) of section 21-2,197, the corporation must send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under section 21-2,201 and accompanied by a copy of section 21-2,201.

Source: Laws 2014, LB749, § 198.

21-2,199 Receivership or custodianship.

(MBCA 14.32) (a) Unless an election to purchase has been filed under section 21-2,201, a court in a judicial proceeding brought to dissolve a corporation may

appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(1) The 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 his or her own name as receiver of the corporation in all courts of this state; and

(2) The 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 affairs of the corporation in the best interests of its shareholders and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

(e) The court from time to time during the receivership or custodianship may order compensation paid and expenses paid or reimbursed to the receiver or custodian from the assets of the corporation or proceeds from the sale of the assets.

Source: Laws 2014, LB749, § 199.

21-2,200 Decree of dissolution.

(MBCA 14.33) (a) If after a hearing the court determines that one or more grounds for judicial dissolution described in section 21-2,197 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding-up and liquidation of the corporation's business and affairs in accordance with section 21-2,188 and the notification of claimants in accordance with sections 21-2,189 and 21-2,190.

Source: Laws 2014, LB749, § 200.

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.

SUBPART 4—MISCELLANEOUS

21-2,202 Deposit with State Treasurer.

(MBCA 14.40) Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the State Treasurer in accordance with the Uniform Disposition of Unclaimed Property Act. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the State Treasurer shall pay such person or his or her representative that amount in accordance with the act.

Source: Laws 2014, LB749, § 202.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

PART 15—FOREIGN CORPORATIONS

SUBPART 1—CERTIFICATE OF AUTHORITY

21-2,203 Authority to transact business required.

(MBCA 15.01) (a) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a) of this section:

- (1) Maintaining, defending, or settling any proceeding;
- (2) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(9) Owning, without more, real or personal property;

(10) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

(11) Transacting business in interstate commerce; or

(12) Acting as a foreign corporate trustee to the extent authorized under section 30-3820.

(c) The list of activities in subsection (b) of this section is not exhaustive.

(d) The requirements of the Nebraska Model Business Corporation Act are not applicable to foreign or alien insurers which are subject to the requirements of Chapter 44.

Source: Laws 2014, LB749, § 203.

21-2,204 Consequences of transacting business without authority.

(MBCA 15.02) (a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation is liable for a civil penalty of five hundred dollars for each day, but not to exceed a total of ten thousand dollars for each year, it transacts business in this state without a certificate of authority. The Attorney General may collect all penalties due under this subsection and shall remit them to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(e) Notwithstanding subsections (a) and (b) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

Source: Laws 2014, LB749, § 204.

21-2,205 Application for certificate of authority.

(MBCA 15.03) (a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 21-2,208;

(2) The name of the state or country under whose law it is incorporated;

(3) Its date of incorporation and period of duration;

(4) The street address of its principal office;

(5) The street address of its registered office in this state and the name of its current registered agent at that office. A post office box number may be provided in addition to the street address; and

(6) The names and street addresses of its current directors and officers.

(b) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is delivered.

Source: Laws 2014, LB749, § 205.

21-2,206 Amended certificate of authority.

(MBCA 15.04) (a) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

(1) Its corporate name;

(2) The period of its duration; or

(3) The state or country of its incorporation.

(b) The requirements of section 21-2,205 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

Source: Laws 2014, LB749, § 206.

21-2,207 Effect of certificate of authority.

(MBCA 15.05) (a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in the Nebraska Model Business Corporation Act.

(b) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as and, except as otherwise provided by the Nebraska Model Business Corporation Act, is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of like character.

(c) The Nebraska Model Business Corporation Act does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

Source: Laws 2014, LB749, § 207.

21-2,208 Corporate name of foreign corporation.

(MBCA 15.06) (a) If the corporate name of a foreign corporation does not satisfy the requirements of section 21-230, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

(1) May add to its corporate name for use in this state the word corporation, incorporated, company, or limited, or the abbreviation corp., inc., co., or ltd.; or

(2) May use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d) of this section, the corporate name, including a fictitious name, of a foreign corporation must not be deceptively similar to, upon the records of the Secretary of State:

(1) The corporate name of a corporation incorporated or authorized to transact business in this state;

(2) A corporate name reserved or registered under section 21-231 or 21-232;

(3) The fictitious name of another foreign corporation authorized to transact business in this state;

(4) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(5) A trade name registered in this state pursuant to sections 87-208 to 87-219.01; and

(6) Any other business entity name registered or filed with the Secretary of State pursuant to the law of this state.

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation or business entity, incorporated or authorized to transact business in this state, that is deceptively similar to, upon the records of the Secretary of State, the name applied for. The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation or business entity consents to the use in writing; or

(2) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to transact business in this state and the foreign corporation:

(1) Has merged with the other corporation or business entity;

(2) Has been formed by reorganization of the other corporation or business entity; or

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation or business entity.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 21-230, it may not transact business in this state under the changed

name until it adopts a name satisfying the requirements of section 21-230 and obtains an amended certificate of authority under section 21-2,206.

Source: Laws 2014, LB749, § 208.

21-2,209 Registered office and registered agent of foreign corporation.

(MBCA 15.07) Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(i) An individual who resides in this state and whose business office is identical with the registered office;

(ii) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(iii) A foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

Source: Laws 2014, LB749, § 209.

21-2,210 Change of registered office or registered agent of foreign corporation.

(MBCA 15.08) (a) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) Its name;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of its new registered office;

(4) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;

(5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If the street address or post office box number of a registered agent's business office changes, the agent may change the street address or post office box number of the registered office of any foreign corporation for which the person is the registered agent by notifying the corporation in writing of the change, and signing and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

Source: Laws 2014, LB749, § 210.

21-2,211 Resignation of registered agent of foreign corporation.

(MBCA 15.09) (a) The registered agent of a foreign corporation may resign the agency appointment by signing and delivering to the Secretary of State for

filing the signed original and two exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the Secretary of State shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if not discontinued. The Secretary of State shall mail the other copy to the foreign corporation at its principal office address shown in its most recent biennial report.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

Source: Laws 2014, LB749, § 211.

21-2,212 Service on foreign corporation.

(MBCA 15.10) (a) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation. By being authorized to transact business in this state, the foreign corporation's agent for service of process also consents to service of process directed to the foreign corporation's agent in this state for a search warrant issued pursuant to sections 29-812 to 29-821, or for any other validly issued and properly served court order or subpoena, including those authorized under sections 86-2,106 and 86-2,112, for records or documents that are in the possession of the foreign corporation and are located inside or outside of this state. The consent to service of a court order, subpoena, or search warrant applies to a foreign corporation that is a party or nonparty to the matter for which the court order, subpoena, or search warrant is sought.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation or the designated custodian of records at its principal office shown in its application for a certificate of authority or in its most recent biennial report if the foreign corporation:

(1) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(2) Has withdrawn from transacting business in this state under section 21-2,213; or

(3) Has had its certificate of authority revoked under section 21-2,218.

(c) Service is perfected under subsection (b) of this section at the earliest of:

(1) The date the foreign corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the foreign corporation; or

(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

Source: Laws 2014, LB749, § 212; Laws 2015, LB294, § 6.

SUBPART 2—WITHDRAWAL OR TRANSFER OF AUTHORITY

21-2,213 Withdrawal of foreign corporation.

(MBCA 15.20) (a) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) That it revokes the authority of its registered agent to accept service on its behalf and consents that service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state may thereafter be made on such corporation outside this state; and

(4) A mailing address at which process against the corporation may be served.

Source: Laws 2014, LB749, § 213.

21-2,214 Automatic withdrawal upon certain conversions.

(MBCA 15.21) A foreign corporation authorized to transact business in this state that converts to a domestic nonprofit corporation or any form of domestic filing entity shall be deemed to have withdrawn on the effective date of the conversion.

Source: Laws 2014, LB749, § 214.

21-2,215 Withdrawal upon conversion to a nonfiling entity.

(MBCA 15.22) (a) A foreign corporation authorized to transact business in this state that converts to a domestic or foreign nonfiling entity shall apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation and the name of the state or country under whose law it was incorporated before the conversion;

(2) That it surrenders its authority to transact business in this state as a foreign corporation;

(3) The type of unincorporated entity to which it has been converted and the jurisdiction whose laws govern its internal affairs; and

(4) If it has been converted to a foreign unincorporated entity:

(i) That it revokes the authority of its registered agent to accept service on its behalf and consents that service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state may thereafter be made on such foreign unincorporated entity outside this state; and

(ii) A mailing address at which process against the foreign unincorporated entity may be served.

(b) After the withdrawal under this section of a corporation that has converted to a domestic unincorporated entity is effective, service of process shall be made on the unincorporated entity in accordance with the regular procedures for service of process on the form of unincorporated entity to which the corporation was converted.

Source: Laws 2014, LB749, § 215.

21-2,216 Transfer of authority.

(MBCA 15.23) (a) A foreign business corporation authorized to transact business in this state that converts to a foreign nonprofit corporation or to any form of foreign unincorporated entity that is required to obtain a certificate of authority or make a similar type of filing with the Secretary of State if it transacts business in this state shall file with the Secretary of State an application for transfer of authority signed by any officer or other duly authorized representative. The application shall set forth:

- (1) The name of the corporation;
- (2) The type of unincorporated entity to which it has been converted and the jurisdiction whose laws govern its internal affairs; and
- (3) Any other information that would be required in a filing under the laws of this state by an unincorporated entity of the type the corporation has become seeking authority to transact business in this state.

(b) The application for transfer of authority shall be delivered to the Secretary of State for filing and shall take effect at the effective time provided in section 21-206.

(c) Upon the effectiveness of the application for transfer of authority, the authority of the corporation under sections 21-2,203 to 21-2,220 to transact business in this state shall be transferred without interruption to the converted entity which shall thereafter hold such authority subject to the provisions of the laws of this state applicable to that type of unincorporated entity.

Source: Laws 2014, LB749, § 216.

SUBPART 3—REVOCATION OF CERTIFICATE OF AUTHORITY

21-2,217 Grounds for revocation.

(MBCA 15.30) The Secretary of State may commence a proceeding under section 21-2,218 to administratively revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

- (1) The foreign corporation is without a registered agent or registered office in this state for sixty days or more;
- (2) The foreign corporation does not inform the Secretary of State under section 21-2,210 or 21-2,211 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;
- (3) An incorporator, director, officer, or agent of the foreign corporation signed a document knowing it was false in any material respect with intent that the document be delivered to the Secretary of State for filing;
- (4) The foreign corporation or its agent for service of process does not comply with section 21-2,212; or

(5) The Secretary of State receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

Source: Laws 2014, LB749, § 217.

21-2,218 Procedure for and effect of revocation.

(MBCA 15.31) (a) If the Secretary of State determines that one or more grounds exist under section 21-2,217 for revocation of a certificate of authority, the Secretary of State shall serve the foreign corporation with written notice of such determination under section 21-2,212.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty days after service of the notice is perfected under section 21-2,212, the Secretary of State shall administratively revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under section 21-2,212.

(c) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

Source: Laws 2014, LB749, § 218.

21-2,219 Foreign corporation; reinstatement.

(a) A foreign corporation, the certificate of authority of which has been administratively revoked under section 21-2,218, may apply to the Secretary of State for reinstatement within five years after the effective date of the revocation. The application must:

(1) Recite the name of the foreign corporation and the effective date of the revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) State that the foreign corporation's name satisfies the requirements of section 21-2,208.

(b) If the Secretary of State determines (1) that the application for reinstatement contains the information required by subsection (a) of this section and that the information is correct and (2) that the foreign corporation has paid to the Secretary of State all delinquent fees and has delivered to the Secretary of State a properly executed and signed biennial report, he or she shall cancel the certificate of revocation, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-2,212.

(c) A foreign corporation, the certificate of authority of which has been administratively revoked under section 21-2,218 for more than five years, may

apply to the Secretary of State for late reinstatement. The application, along with the fee set forth in section 21-205, must:

(1) Recite the name of the foreign corporation and the effective date of the revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated;

(3) State that the foreign corporation's name satisfies the requirements of section 21-2,208;

(4) State that a legitimate reason exists for reinstatement and what such legitimate reason is; and

(5) State that such reinstatement does not constitute fraud on the public.

(d) If the Secretary of State determines (1) that the application for late reinstatement contains the information required by subsection (c) of this section and that the information is correct and (2) that the foreign corporation has paid to the Secretary of State all delinquent fees and has delivered to the Secretary of State a properly executed and signed biennial report, he or she shall cancel the certificate of revocation, prepare a certificate of late reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-2,212.

(e) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its business as if the revocation had never occurred.

Source: Laws 2014, LB749, § 219; Laws 2015, LB279, § 5.

21-2,220 Appeal from revocation.

(MBCA 15.32) (a) If the Secretary of State denies a foreign corporation's application for reinstatement following administrative revocation of its certificate of authority under section 21-2,218, he or she shall serve the foreign corporation under section 21-2,212 with a written notice that explains the reason or reasons for denial.

(b) A foreign corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected under section 21-2,212. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of the Secretary of State's certificate of revocation, the foreign corporation's application for reinstatement, and the Secretary of State's notice of denial.

(c) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 2014, LB749, § 220.

SUBPART 4—FOREIGN CORPORATION DOMESTICATION

21-2,220.01 Foreign corporation; domestication; procedure.

In lieu of compliance with section 21-2,203, relating to the authorization of foreign corporations to transact business in this state, any corporation orga-

nized under the laws of any other state or states which has heretofore filed, or which may hereafter file, with the Secretary of State of this state a copy, certified by the Secretary of State or other proper officer of the state or country under the laws of which such foreign corporation is formed, of its charter or articles of association or incorporation, together with all amendments to such date, the street address of its registered office in this state and the name and street address and, if one exists, a post office box number, of its current registered agent at that office, on filing with the Secretary of State a certified copy of a resolution adopted by its board of directors, including the date the resolution was adopted, accepting and agreeing to be bound by the provisions of the Nebraska Model Business Corporation Act with respect to its property and business operations within this state shall become and be a body corporate of this state as a foreign domesticated corporation. If the stock is no par, a resolution of the corporation, signed by an officer of the corporation, shall state the book value of the no par stock, which in no event shall be less than one dollar per share.

Source: Laws 2016, LB794, § 11.

21-2,220.02 Foreign corporation; cessation of domestication.

Any foreign corporation which has domesticated pursuant to section 21-2,220.01 may cease to be a foreign domesticated corporation by filing with the Secretary of State a certified copy of a resolution adopted by its board of directors renouncing its domestication and withdrawing its acceptance and agreement provided for in section 21-2,220.01.

Source: Laws 2016, LB794, § 12.

21-2,220.03 Foreign corporation; surrender of foreign charter; effect.

If a foreign corporation which has domesticated pursuant to section 21-2,220.01 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 21-219, 21-220, and 21-2,229, such foreign domesticated corporation shall thereupon become and be a domestic corporation organized under the Nebraska Model Business Corporation Act.

Source: Laws 2016, LB794, § 13.

21-2,220.04 Foreign corporation; domesticated under prior law; status.

Any corporation organized under the laws of any other state which had become, prior to January 1, 2017, a body corporate of this state as a foreign domesticated corporation, shall retain such status for all purposes.

Source: Laws 2016, LB794, § 14.

PART 16—RECORDS AND REPORTS

SUBPART 1—RECORDS

21-2,221 Corporate records.

(MBCA 16.01) (a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record

of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(d) A corporation shall maintain its records in the form of a document, including an electronic record or in another form capable of conversion into paper form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Its articles or restated articles of incorporation, all amendments to them currently in effect, and any notices to shareholders referred to in subdivision (k)(5) of section 21-203 regarding facts on which a filed document is dependent;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by its board of directors creating one or more classes or series of shares and fixing their relative rights, preferences, and limitations if shares issued pursuant to those resolutions are outstanding;

(4) The minutes of all shareholders' meetings and records of all action taken by shareholders without a meeting for the past three years;

(5) All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under section 21-2,227;

(6) A list of the names and business addresses of its current directors and officers; and

(7) Its most recent biennial report delivered to the Secretary of State under section 21-2,228.

Source: Laws 2014, LB749, § 221.

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.

21-2,223 Scope of inspection right.

(MBCA 16.03) (a) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder represented.

(b) The right to copy records under section 21-2,222 includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and so requested by the shareholder.

(c) The corporation may comply at its expense with a shareholder's demand to inspect the record of shareholders under subdivision (c)(3) of section 21-2,222 by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder's demand.

(d) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder.

The charge may not exceed the estimated cost of production, reproduction, or transmission of the records.

Source: Laws 2014, LB749, § 223.

21-2,224 Court-ordered inspection.

(MBCA 16.04) (a) If a corporation does not allow a shareholder who complies with subsection (a) of section 21-2,222 to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(b) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with subsections (c) and (d) of section 21-2,222 may apply to the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

Source: Laws 2014, LB749, § 224.

21-2,225 Inspection of records by directors.

(MBCA 16.05) (a) A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located may order inspection and copying of the books, records, and documents at the corporation's expense upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense and provisions prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and the court may also order the corporation to reimburse the director for the director's expenses incurred in connection with the application.

Source: Laws 2014, LB749, § 225.

21-2,226 Exception to notice requirements.

(MBCA 16.06) (a) Whenever notice would otherwise be required to be given under any provision of the Nebraska Model Business Corporation Act to a shareholder, such notice need not be given if:

(1) Notices to shareholders of two consecutive annual meetings and all notices of meetings during the period between such two consecutive annual meetings have been sent to such shareholder at such shareholder's address as

shown on the records of the corporation and have been returned undeliverable or could not be delivered; or

(2) All, but not less than two, payments of dividends on securities during a twelve-month period, or two consecutive payments of dividends on securities during a period of more than twelve months, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable or could not be delivered.

(b) If any such shareholder shall deliver to the corporation a written notice setting forth such shareholder's then-current address, the requirement that notice be given to such shareholder shall be reinstated.

Source: Laws 2014, LB749, § 226.

SUBPART 2—REPORTS

21-2,227 Financial statements for shareholders.

(MBCA 16.20) (a) A corporation shall deliver to its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If the annual financial statements are reported upon by a public accountant, the report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(1) Stating such person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) Within one hundred twenty days after the close of each fiscal year, the corporation shall send the annual financial statements to each shareholder. Thereafter, on written request from a shareholder to whom the statements were not sent, the corporation shall send the shareholder the latest financial statements. A public corporation may fulfill its responsibilities under this section by delivering the specified financial statements or otherwise making them available in any manner permitted by the applicable rules and regulations of the United States Securities and Exchange Commission.

Source: Laws 2014, LB749, § 227.

21-2,228 Biennial report for Secretary of State.

(MBCA 16.21) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the Secretary of State for filing a biennial report as required under section 21-301 or 21-304.

Source: Laws 2014, LB749, § 228.

21-2,229 Notice of incorporation, amendment, merger, or share exchange; notice of dissolution.

(a) Notice of incorporation, amendment, merger, or share exchange of a domestic corporation shall be published for three successive weeks in some legal newspaper of general circulation in the county where the corporation's principal office, or, if none in this state, its registered office, is located.

A notice of incorporation shall show (1) the corporate name for the corporation, (2) the number of shares the corporation is authorized to issue, (3) the street address of the corporation's initial registered office and the name of its initial registered agent at that office, and (4) the name and street address of each incorporator.

A brief resume of any amendment, merger, or share exchange of the corporation shall be published in the same manner and for the same period of time as a notice of incorporation is required to be published.

(b) Notice of the dissolution of a domestic corporation and the terms and conditions of such dissolution and the names of the persons who are to wind up and liquidate its business and affairs and their official titles with a statement of assets and liabilities of the corporation shall be published for three successive weeks in some legal newspaper of general circulation in the county where the corporation's principal office, or, if none in this state, its registered office, is located.

(c) Proof of publication of any of the notices required to be published under this section shall be filed in the office of the Secretary of State. In the event any notice required to be given pursuant to this section is not given but is subsequently published for the required time and proof of the publication thereof is filed in the office of the Secretary of State, the acts of such corporation prior to, as well as after, such publication shall be valid.

Source: Laws 2014, LB749, § 229.

PART 17—TRANSITION PROVISIONS

21-2,230 Application to existing domestic corporations.

(MBCA 17.01) The Nebraska Model Business Corporation Act applies to all domestic corporations in existence on January 1, 2017, that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

Source: Laws 2014, LB749, § 230; Laws 2015, LB157, § 8.

21-2,231 Application to qualified foreign corporations.

(MBCA 17.02) A foreign corporation authorized to transact business in this state on January 1, 2017, is subject to the Nebraska Model Business Corporation Act but is not required to obtain a new certificate of authority to transact business under the act.

Source: Laws 2014, LB749, § 231; Laws 2015, LB157, § 9.

21-2,232 Saving provisions.

(MBCA 17.03) (a) Except as provided in subsection (b) of this section, the repeal of a statute by Laws 2014, LB749, does not affect:

- (1) The operation of the statute or any action taken under it before its repeal;
- (2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;
- (3) Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal; or
- (4) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.
- (b) If a penalty or punishment imposed for violation of a statute repealed by Laws 2014, LB749, is reduced by Laws 2014, LB749, the penalty or punishment if not already imposed shall be imposed in accordance with Laws 2014, LB749.
- (c) In the event that any provisions of the Nebraska Model Business Corporation Act are deemed to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., as the act existed on January 1, 2014, the provisions of the Nebraska Model Business Corporation Act shall control to the maximum extent permitted by section 102(a)(2) of that federal act, 15 U.S.C. 7002(a)(2).

Source: Laws 2014, LB749, § 232.

ARTICLE 3 OCCUPATION TAX

Section	
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§ 21-301**CORPORATIONS AND OTHER COMPANIES**

Section

- 21-328. Occupation tax; refund; procedure; appeal.
21-329. Paid-up capital stock, defined.
21-330. Corporations; excess payment; refund.

21-301 Domestic corporations; biennial report and occupation tax; procedure.

(1) Each domestic corporation subject to the Nebraska Model Business Corporation Act shall deliver a biennial report to the Secretary of State, as of January 1 of each even-numbered year, in such form as the Secretary of State may prescribe. The report shall be signed by one of the following: The president, a vice president, a secretary, or a treasurer of the corporation. The signature may be digital or electronic if it conforms to section 86-611. The report and occupation tax shall be delivered to the Secretary of State. The report and occupation tax shall be due on March 1 of each even-numbered year and shall become delinquent if not filed and paid by April 15 of each even-numbered year. If the Secretary of State finds that such report and occupation tax conform to the requirements of the law, the Secretary of State shall file the report. If the Secretary of State finds that the report or occupation tax does not conform, the Secretary of State shall not file the report or accept the occupation tax but shall return the report and occupation tax to the corporation for any necessary corrections. A correction or amendment to the report may be filed at any time.

(2) In each even-numbered year, the Secretary of State shall cause a notice to be sent either by United States mail or electronically transmitted to each corporation for which a report and occupation tax as described in this section have not been received as of March 1. The notice shall state that the report has not been received, that the report and occupation tax are due on March 1, and that the corporation will be administratively dissolved if the report and proper occupation tax are not received by April 15.

Source: Laws 1913, c. 240, § 1, p. 745; R.S.1913, § 761; C.S.1922, § 679; C.S.1929, § 24-1701; R.S.1943, § 21-301; Laws 1967, c. 101, § 1, p. 309; Laws 1969, c. 124, § 1, p. 567; Laws 1982, LB 928, § 6; Laws 2002, LB 989, § 1; Laws 2003, LB 524, § 1; Laws 2006, LB 647, § 1; Laws 2008, LB379, § 1; Laws 2014, LB749, § 238.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-302 Domestic corporations; biennial report; contents.

The biennial report required under section 21-301 from a domestic corporation shall show:

- (1) The exact corporate name of the corporation;
- (2) The street address of the corporation's registered office and the name of its current registered agent at that office in this state. A post office box number may be provided in addition to the street address;
- (3) The street address of the corporation's principal office;
- (4) The names and street addresses of the corporation's directors and principal officers, which shall include the president, secretary, and treasurer;
- (5) A brief description of the nature of the corporation's business;

- (6) The amount of paid-up capital stock; and
- (7) The change or changes, if any, in the above particulars made since the last biennial report.

Source: Laws 1913, c. 240, § 2, p. 745; R.S.1913, § 762; C.S.1922, § 680; C.S.1929, § 24-1702; R.S.1943, § 21-302; Laws 1967, c. 101, § 2, p. 309; Laws 1995, LB 109, § 195; Laws 2003, LB 524, § 2; Laws 2008, LB379, § 2; Laws 2014, LB749, § 239.

21-303 Corporations; occupation tax; amount; stock without par value, determination of amount.

(1) Upon the delivery of the biennial report required under section 21-301 to the Secretary of State, it shall be the duty of every corporation for profit, registered in the office of the Secretary of State on January 1, whether incorporated under the laws of this state or incorporated under the laws of any other state when such corporations have domesticated in this state pursuant to section 21-2,220.01, to pay to the Secretary of State an occupation tax in each even-numbered calendar year beginning January 1, which occupation tax shall be due and assessable on such date and delinquent if not paid on or before April 15 of each even-numbered year.

(2) The occupation tax shall be as follows: When the paid-up capital stock of a corporation does not exceed ten thousand dollars, an occupation tax of twenty-six dollars; when such paid-up capital stock exceeds ten thousand dollars but does not exceed twenty thousand dollars, an occupation tax of forty dollars; when such paid-up capital stock exceeds twenty thousand dollars but does not exceed thirty thousand dollars, an occupation tax of sixty dollars; when such paid-up capital stock exceeds thirty thousand dollars but does not exceed forty thousand dollars, an occupation tax of eighty dollars; when such paid-up capital stock exceeds forty thousand dollars but does not exceed fifty thousand dollars, an occupation tax of one hundred dollars; when such paid-up capital stock exceeds fifty thousand dollars but does not exceed sixty thousand dollars, an occupation tax of one hundred twenty dollars; when such paid-up capital stock exceeds sixty thousand dollars but does not exceed seventy thousand dollars, an occupation tax of one hundred forty dollars; when such paid-up capital stock exceeds seventy thousand dollars but does not exceed eighty thousand dollars, an occupation tax of one hundred sixty dollars; when such paid-up capital stock exceeds eighty thousand dollars but does not exceed ninety thousand dollars, an occupation tax of one hundred eighty dollars; when such paid-up capital stock exceeds ninety thousand dollars but does not exceed one hundred thousand dollars, an occupation tax of two hundred dollars; when such paid-up capital stock exceeds one hundred thousand dollars but does not exceed one hundred twenty-five thousand dollars, an occupation tax of two hundred forty dollars; when such paid-up capital stock exceeds one hundred twenty-five thousand dollars but does not exceed one hundred fifty thousand dollars, an occupation tax of two hundred eighty dollars; when such paid-up capital stock exceeds one hundred fifty thousand dollars but does not exceed one hundred seventy-five thousand dollars, an occupation tax of three hundred twenty dollars; when such paid-up capital stock exceeds one hundred seventy-five thousand dollars but does not exceed two hundred thousand dollars, an occupation tax of three hundred sixty dollars; when such paid-up capital stock exceeds two hundred thousand dollars but does not exceed two hundred

twenty-five thousand dollars, an occupation tax of four hundred dollars; when such paid-up capital stock exceeds two hundred twenty-five thousand dollars but does not exceed two hundred fifty thousand dollars, an occupation tax of four hundred forty dollars; when such paid-up capital stock exceeds two hundred fifty thousand dollars but does not exceed two hundred seventy-five thousand dollars, an occupation tax of four hundred eighty dollars; when such paid-up capital stock exceeds two hundred seventy-five thousand dollars but does not exceed three hundred thousand dollars, an occupation tax of five hundred twenty dollars; when such paid-up capital stock exceeds three hundred thousand dollars but does not exceed three hundred twenty-five thousand dollars, an occupation tax of five hundred sixty dollars; when such paid-up capital stock exceeds three hundred twenty-five thousand dollars but does not exceed three hundred fifty thousand dollars, an occupation tax of six hundred dollars; when such paid-up capital stock exceeds three hundred fifty thousand dollars but does not exceed four hundred thousand dollars, an occupation tax of six hundred sixty-six dollars; when such paid-up capital stock exceeds four hundred thousand dollars but does not exceed four hundred fifty thousand dollars, an occupation tax of seven hundred thirty dollars; when such paid-up capital stock exceeds four hundred fifty thousand dollars but does not exceed five hundred thousand dollars, an occupation tax of eight hundred dollars; when such paid-up capital stock exceeds five hundred thousand dollars but does not exceed six hundred thousand dollars, an occupation tax of nine hundred ten dollars; when such paid-up capital stock exceeds six hundred thousand dollars but does not exceed seven hundred thousand dollars, an occupation tax of one thousand ten dollars; when such paid-up capital stock exceeds seven hundred thousand dollars but does not exceed eight hundred thousand dollars, an occupation tax of one thousand one hundred twenty dollars; when such paid-up capital stock exceeds eight hundred thousand dollars but does not exceed nine hundred thousand dollars, an occupation tax of one thousand two hundred thirty dollars; when such paid-up capital stock exceeds nine hundred thousand dollars but does not exceed one million dollars, an occupation tax of one thousand three hundred thirty dollars; when such paid-up capital stock exceeds one million dollars but does not exceed ten million dollars, an occupation tax of one thousand three hundred thirty dollars, and eight hundred dollars additional for each million or fraction thereof over and above one million dollars; when such paid-up capital stock exceeds ten million dollars but does not exceed fifteen million dollars, an occupation tax of twelve thousand dollars; when such paid-up capital stock exceeds fifteen million dollars but does not exceed twenty million dollars, an occupation tax of fourteen thousand six hundred sixty dollars; when such paid-up capital stock exceeds twenty million dollars but does not exceed twenty-five million dollars, an occupation tax of seventeen thousand three hundred thirty dollars; when such paid-up capital stock exceeds twenty-five million dollars but does not exceed fifty million dollars, an occupation tax of twenty thousand six hundred sixty dollars; when such paid-up capital stock exceeds fifty million dollars but does not exceed one hundred million dollars, an occupation tax of twenty-one thousand three hundred thirty dollars; and when such paid-up capital stock exceeds one hundred million dollars, an occupation tax of twenty-three thousand nine hundred ninety dollars. The minimum occupation tax for filing such report shall be twenty-six dollars. For purposes of determining the occupation tax, the stock of corporations incorporated under the laws of any other state, which corporations have domesticated in this state pursuant to section

21-2,220.01 and which stock is without par value, shall be deemed to have a par value of an amount equal to the amount paid in as capital for such shares at the time of the issuance thereof.

Source: Laws 1913, c. 240, § 3, p. 745; R.S.1913, § 763; C.S.1922, § 681; C.S.1929, § 24-1703; R.S.1943, § 21-303; Laws 1947, c. 55, § 1, p. 185; Laws 1955, c. 63, § 2, p. 200; Laws 1965, c. 87, § 1, p. 350; Laws 1967, c. 101, § 3, p. 310; Laws 1969, c. 124, § 2, p. 568; Laws 1982, LB 928, § 7; Laws 1992, LB 719A, § 90; Laws 2003, LB 524, § 3; Laws 2014, LB749, § 240; Laws 2016, LB794, § 15.

21-304 Foreign corporations; biennial report and occupation tax; procedure.

(1) Each foreign corporation subject to the Nebraska Model Business Corporation Act, doing business in this state, owning or using a part or all of its capital or plant in this state, and subject to compliance with all other provisions of law shall, in addition to all other statements required by law, deliver a biennial report to the Secretary of State, as of January 1 of each even-numbered year, in such form as the Secretary of State may prescribe. The report shall be signed by one of the following: The president, a vice president, a secretary, or a treasurer of the corporation. The signature may be digital or electronic if it conforms to section 86-611. The report and occupation tax shall be delivered to the Secretary of State. The report and occupation tax shall be due on March 1 of each even-numbered year and shall become delinquent if not filed and paid by April 15 of each even-numbered year. If the Secretary of State finds that such report and occupation tax conform to the requirements of the law, the Secretary of State shall file the report. If the Secretary of State finds that the report or occupation tax does not conform, the Secretary of State shall not file the report or accept the occupation tax but shall return the report and occupation tax to the corporation for any necessary corrections. A correction or amendment to the report may be filed at any time.

(2) In each even-numbered year, the Secretary of State shall cause a notice to be sent either by United States mail or electronically transmitted to each corporation for which a report and occupation tax as described in this section have not been received as of March 1. The notice shall state that the report has not been received, that the report and occupation tax are due on March 1, and that the authority of the corporation to transact business in this state will be administratively revoked if the report and proper occupation tax are not received by April 15 of each even-numbered year.

Source: Laws 1913, c. 240, § 4, p. 748; R.S.1913, § 764; C.S.1922, § 682; C.S.1929, § 24-1704; R.S.1943, § 21-304; Laws 1955, c. 63, § 3, p. 203; Laws 1967, c. 101, § 4, p. 313; Laws 1969, c. 124, § 3, p. 571; Laws 1982, LB 928, § 8; Laws 2002, LB 989, § 2; Laws 2003, LB 524, § 4; Laws 2006, LB 647, § 2; Laws 2008, LB379, § 3; Laws 2014, LB749, § 241.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-305 Foreign corporations; biennial report; contents.

The biennial report required under section 21-304 from a foreign corporation shall show:

- (1) The exact corporate name of the foreign corporation and the name of the state or country under whose law it is incorporated;
- (2) The street address of the foreign corporation's registered office and the name of its current registered agent at that office in this state. A post office box number may be provided in addition to the street address;
- (3) The street address of the foreign corporation's principal office;
- (4) The names and street addresses of the foreign corporation's directors and principal officers which shall include the president, secretary, and treasurer;
- (5) A brief description of the nature of the foreign corporation's business;
- (6) The value of the property owned and used by the foreign corporation in this state and where such property is situated; and
- (7) The change or changes, if any, in the above particulars made since the last biennial report.

Source: Laws 1913, c. 240, § 5, p. 749; R.S.1913, § 765; C.S.1922, § 683; C.S.1929, § 24-1705; R.S.1943, § 21-305; Laws 1967, c. 101, § 5, p. 313; Laws 1995, LB 109, § 196; Laws 2003, LB 524, § 5; Laws 2008, LB379, § 4; Laws 2014, LB749, § 242.

21-306 Foreign corporations; occupation tax; investigation by Secretary of State for collection purposes.

Upon the delivery of the biennial report required under section 21-304 to the Secretary of State, it shall be the duty of every foreign corporation doing business in this state to pay to the Secretary of State an occupation tax each even-numbered calendar year beginning January 1 and become due and assessable on March 1 of that year and become delinquent if not paid by April 15 of each even-numbered year. The occupation tax shall be measured by the property employed by the foreign corporation in the conduct of its business in this state. For such purpose the property shall consist of the sum total of the actual value of all real estate and personal property employed in this state by such foreign corporation in the transaction of its business. The occupation tax to be paid by such foreign corporation shall be based upon the sum so determined and shall be considered the capital stock of such foreign corporation in this state for the purpose of the occupation tax. The schedule of payment shall be double the occupation tax set forth in section 21-303, or any amendments thereto, except that the occupation tax shall not exceed thirty thousand dollars, and the Secretary of State, or any person deputized by the Secretary of State, shall have authority to investigate and obtain information from such corporation or any state, county, or city official. Such officers are authorized by this section to furnish such information to the Secretary of State, or anyone deputized by the Secretary of State, in order to determine all facts and give effect to the collection of the occupation tax.

Source: Laws 1913, c. 240, § 6, p. 749; R.S.1913, § 766; C.S.1922, § 684; C.S.1929, § 24-1706; Laws 1933, c. 32, § 1, p. 212; Laws 1935, c. 47, § 1, p. 172; C.S.Supp.,1941, § 24-1706; R.S.1943, § 21-306; Laws 1955, c. 63, § 4, p. 203; Laws 1965, c. 87, § 2, p. 353; Laws 1967, c. 101, § 6, p. 313; Laws 1969, c. 124, § 4, p. 571; Laws 1982, LB 928, § 9; Laws 2002, LB 989, § 3; Laws 2003, LB 524, § 6; Laws 2014, LB749, § 243.

21-311 Occupation taxes; disposition; monthly report of Secretary of State.

The Secretary of State shall make a report monthly to the Tax Commissioner of the occupation taxes collected under sections 21-301 to 21-330 and remit them to the State Treasurer for credit to the General Fund. The report shall include the amount of any refunds paid out under section 21-328.

Source: Laws 1913, c. 240, § 11, p. 750; R.S.1913, § 771; C.S.1922, § 689; C.S.1929, § 24-1711; R.S.1943, § 21-311; Laws 1984, LB 799, § 2; Laws 2003, LB 524, § 7; Laws 2014, LB749, § 244.

21-312 Occupation taxes; lien; notice; lien subject to prior liens.

The occupation taxes required to be paid by sections 21-301 to 21-330 shall be the first and best lien on all property of the corporation whether such real or personal property is employed by the corporation in the prosecution of its business or is in the hands of an assignee, trustee, or receiver for the benefit of the creditors and stockholders thereof. The Secretary of State may file notice of such lien in the office of the county clerk of the county wherein the personal property sought to be charged with such lien is situated and with the county clerk or register of deeds of the county wherein the real estate sought to be charged with such lien is situated. The lien provided for in this section shall be invalid as to any mortgagee or pledgee whose lien is filed, as against any judgment lien which attached, or as against any purchaser whose rights accrued, prior to the filing of such notice.

Source: Laws 1913, c. 240, § 12, p. 750; R.S.1913, § 772; C.S.1922, § 690; C.S.1929, § 24-1712; Laws 1943, c. 54, § 1, p. 218; R.S.1943, § 21-312; Laws 1969, c. 124, § 5, p. 572; Laws 1988, LB 800, § 1; Laws 2014, LB749, § 245.

21-313 Domestic corporation; foreign corporation; failure to file report or pay occupation tax; effect.

(1) If a domestic corporation required to deliver the biennial report and pay the occupation tax prescribed in sections 21-301 to 21-330 fails or neglects to deliver such report or pay such occupation tax by April 15 of each even-numbered year, such corporation shall be administratively dissolved on April 16 of such year.

(2) If a foreign corporation required to deliver the biennial report and pay the occupation tax prescribed in sections 21-301 to 21-330 fails or neglects to deliver such report or pay such occupation tax by April 15 of each even-numbered year, the authority of such corporation to transact business in this state shall be administratively revoked on April 16 of such year.

Source: Laws 1913, c. 240, § 13, p. 750; R.S.1913, § 773; C.S.1922, § 691; C.S.1929, § 24-1713; R.S.1943, § 21-313; Laws 1945, c. 39, § 1, p. 195; Laws 1955, c. 63, § 7, p. 204; Laws 1967, c. 101, § 9, p. 315; Laws 1969, c. 124, § 6, p. 572; Laws 1982, LB 928, § 10; Laws 2002, LB 989, § 4; Laws 2003, LB 524, § 8; Laws 2014, LB749, § 246.

21-314 Occupation taxes; how collected; credited to General Fund.

Occupation tax or taxes to be paid as provided in sections 21-301 to 21-330 may be recovered by an action in the name of the state and on collection shall be remitted to the State Treasurer for credit to the General Fund.

Source: Laws 1913, c. 240, § 14, p. 750; R.S.1913, § 774; C.S.1922, § 692; C.S.1929, § 24-1714; R.S.1943, § 21-314; Laws 1969, c. 124, § 7, p. 573; Laws 1988, LB 800, § 2; Laws 2003, LB 524, § 9; Laws 2014, LB749, § 247.

21-315 Occupation taxes; collection; venue of action.

The Attorney General, on request of the Secretary of State, shall institute such action to recover occupation taxes in the district court of Lancaster County or any other county in the state in which such corporation has an office or place of business.

Source: Laws 1913, c. 240, § 15, p. 750; R.S.1913, § 775; C.S.1922, § 693; C.S.1929, § 24-1715; R.S.1943, § 21-315; Laws 2014, LB749, § 248.

21-317 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-318 List of corporations; duty of Secretary of State.

It shall be the duty of the Secretary of State to prepare and keep a correct list of all corporations subject to sections 21-301 to 21-330 and engaged in business within this state. For the purpose of obtaining the necessary information, the Secretary of State, or other person deputized by him or her, shall have access to the records of the offices of the county clerks of the state.

Source: Laws 1913, c. 240, § 18, p. 751; R.S.1913, § 778; C.S.1922, § 696; C.S.1929, § 24-1718; R.S.1943, § 21-318; Laws 1988, LB 800, § 3; Laws 2014, LB749, § 249.

21-319 Investigation by Secretary of State for collection purposes; duty of county clerk.

Any county clerk shall, upon request of the Secretary of State, furnish him or her with such information as is shown by the records of his or her office concerning corporations located within his or her county and subject to sections 21-301 to 21-330. The Secretary of State, or any person deputized by him or her for the purpose of determining the amount of the occupation tax due from such corporation, shall have authority to investigate and determine the facts showing the proportion of the paid-up capital stock of the company represented by its property and business in this state.

Source: Laws 1913, c. 240, § 19, p. 751; R.S.1913, § 779; C.S.1922, § 697; C.S.1929, § 24-1719; R.S.1943, § 21-319; Laws 1988, LB 800, § 4; Laws 2014, LB749, § 250.

21-321 Reports and fees; exemptions.

All banking, insurance, and building and loan association corporations paying fees and making reports to the Director of Insurance or the Director of Banking and Finance and all other corporations paying an occupation tax to

the state under any other statutory provisions than those of sections 21-301 to 21-330 shall be exempt from the provisions of such sections.

Source: Laws 1913, c. 240, § 21, p. 752; R.S.1913, § 781; C.S.1922, § 699; C.S.1929, § 24-1721; R.S.1943, § 21-321; Laws 1969, c. 124, § 8, p. 573; Laws 1988, LB 800, § 5; Laws 2003, LB 524, § 10; Laws 2014, LB749, § 251.

21-322 Dissolution; certificate required; filing; fees.

In case of dissolution of a corporation by action of a competent court, or the winding up of a corporation, either foreign or domestic, by proceedings in assignment or bankruptcy, a certificate shall be signed by the clerk of the court in which such proceedings were had and filed in the office of the Secretary of State. The fees for making and filing such certificate shall be taxed as costs in the proceedings and paid out of the funds of the corporation and shall have the same priority as other costs.

Source: Laws 1913, c. 240, § 22, p. 752; R.S.1913, § 782; C.S.1922, § 700; C.S.1929, § 24-1722; Laws 1943, c. 54, § 2, p. 218; R.S.1943, § 21-322; Laws 1967, c. 101, § 11, p. 315; Laws 2014, LB749, § 252.

21-323 Domestic corporations; reports and taxes; notice; failure to pay; administrative dissolution; lien; priority.

(1) Prior to January 1 of each even-numbered year, the Secretary of State shall cause to be mailed by first-class mail to the last-named and appointed registered agent at the last-named street address of the registered office of each domestic corporation subject to sections 21-301 to 21-330 a notice stating that on or before March 1 of each even-numbered year occupation taxes are due to be paid and a properly executed and signed biennial report is due to be filed. If such occupation taxes are not paid and the report is not filed by April 15 of each even-numbered year, (a) such taxes and report shall become delinquent, (b) the delinquent corporation shall be administratively dissolved on April 16 of such year for nonpayment of occupation taxes and failure to file the report, and (c) the delinquent occupation tax shall be a lien upon the assets of the corporation subsequent only to state, county, and municipal taxes.

(2) Upon the failure of any domestic corporation to pay its occupation tax and deliver the biennial report within the time limited by sections 21-301 to 21-330, the Secretary of State shall on April 16 of such year administratively dissolve the corporation for nonpayment of taxes and make such entry and showing upon the records of his or her office.

(3)(a) The Secretary of State shall administratively dissolve a corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under section 21-236.

(b) A corporation administratively dissolved continues its corporate existence but may not carry on any business, except that business necessary to wind up and liquidate its business and affairs under section 21-2,188 and notify claimants under sections 21-2,189 and 21-2,190.

(c) The administrative dissolution of a corporation shall not terminate the authority of its registered agent.

(4) All delinquent occupation taxes of the corporation shall be a lien upon the assets of the corporation, subsequent only to state, county, and municipal taxes.

(5) No domestic corporation shall be voluntarily dissolved until all occupation taxes and fees due to or assessable by the state have been paid and the biennial report filed by such corporation.

Source: Laws 1913, c. 240, § 22, p. 752; R.S.1913, § 782; C.S.1922, § 700; C.S.1929, § 24-1722; Laws 1943, c. 54, § 2, p. 218; R.S.1943, § 21-323; Laws 1957, c. 242, § 10, p. 823; Laws 1967, c. 101, § 12, p. 316; Laws 1969, c. 124, § 9, p. 573; Laws 1971, LB 485, § 1; Laws 1982, LB 928, § 11; Laws 1995, LB 109, § 197; Laws 2002, LB 989, § 5; Laws 2003, LB 524, § 11; Laws 2014, LB749, § 253.

21-323.01 Domestic corporation administratively dissolved; reinstatement; application; procedure; payment required.

(1)(a) Until January 1, 2017, the provisions of this subsection apply. A corporation automatically dissolved under section 21-323 may apply to the Secretary of State for reinstatement within five years after the effective date of its automatic dissolution. The application shall:

(i) Recite the name of the corporation and the effective date of its automatic dissolution;

(ii) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(iii) State that the corporation's name satisfies the requirements of section 21-2028; and

(iv) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for reinstatement.

(b) If the Secretary of State determines (i) that the application for reinstatement contains the information required by subdivision (a) of this subsection and that the information is correct and (ii) that the corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-2034.

(c) A corporation that has been automatically dissolved under section 21-323 for more than five years may apply to the Secretary of State for late reinstatement. The application shall:

(i) Recite the name of the corporation and the effective date of its automatic dissolution;

(ii) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(iii) State that the corporation's name satisfies the requirements of section 21-2028;

(iv) State that a legitimate reason exists for reinstatement and what such legitimate reason is;

(v) State that such reinstatement does not constitute fraud on the public; and

(vi) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for late reinstatement.

(d) If the Secretary of State determines (i) that an application for late reinstatement contains the information required by subdivision (c) of this subsection and that the information is correct and (ii) that the corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of dissolution, prepare a certificate of late reinstatement that recites his or her determination and the effective date of the reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-2034.

(e) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the automatic dissolution and the corporation shall resume carrying on its business as if the automatic dissolution had never occurred.

(f) A corporation applying for reinstatement under this subsection shall:

(i)(A) Pay to the Secretary of State a sum equal to all occupation taxes delinquent at the time the corporation was automatically dissolved, plus a sum equal to all occupation taxes which would otherwise have been due for the years the corporation was automatically dissolved; and (B) deliver to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(ii) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such corporation was automatically dissolved.

(2)(a) Beginning January 1, 2017, the provisions of this subsection apply. A corporation administratively dissolved under section 21-323 may apply to the Secretary of State for reinstatement within five years after the effective date of its administrative dissolution. The application shall:

(i) Recite the name of the corporation and the effective date of its administrative dissolution;

(ii) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(iii) State that the corporation's name satisfies the requirements of section 21-230; and

(iv) Be accompanied by a fee in the amount prescribed in section 21-205, as such section may from time to time be amended, for an application for reinstatement.

(b) If the Secretary of State determines (i) that the application for reinstatement contains the information required by subdivision (a) of this subsection and that the information is correct and (ii) that the corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-236.

(c) A corporation administratively dissolved under section 21-323 for more than five years may apply to the Secretary of State for late reinstatement. The application shall:

(i) Recite the name of the corporation and the effective date of its administrative dissolution;

(ii) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(iii) State that the corporation's name satisfies the requirements of section 21-230;

(iv) State that a legitimate reason exists for reinstatement and what such legitimate reason is;

(v) State that such reinstatement does not constitute fraud on the public; and

(vi) Be accompanied by a fee in the amount prescribed in section 21-205, as such section may from time to time be amended, for an application for late reinstatement.

(d) If the Secretary of State determines (i) that the application for late reinstatement contains the information required by subdivision (c) of this subsection and that the information is correct and (ii) that the corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of dissolution, prepare a certificate of late reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-236.

(e) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its business as if the administrative dissolution had never occurred.

(f) A corporation applying for reinstatement under this subsection shall:

(i)(A) Pay to the Secretary of State a sum equal to all occupation taxes delinquent at the time the corporation was administratively dissolved, plus a sum equal to all occupation taxes which would otherwise have been due for the years the corporation was administratively dissolved and (B) deliver to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(ii) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such corporation was administratively dissolved.

Source: Laws 1995, LB 109, § 198; Laws 1996, LB 1036, § 1; Laws 2003, LB 524, § 12; Laws 2012, LB854, § 2; Laws 2014, LB749, § 254; Laws 2015, LB279, § 6.

21-323.02 Domestic corporation administratively dissolved; denial of reinstatement; appeal.

(1) If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution under section 21-323, he or she shall serve the corporation under section 21-236 with a written notice that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected under section 21-236. The corporation shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the

Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 1995, LB 109, § 199; Laws 2014, LB749, § 255.

21-325 Foreign corporations; reports and taxes; notice; failure to pay; authority to transact business revoked; lien; priority.

(1) Prior to January 1 of each even-numbered year, the Secretary of State shall cause to be mailed by first-class mail to the last-known address of each foreign corporation subject to sections 21-301 to 21-330 a notice stating that on or before March 1 of each even-numbered year occupation taxes are due to be paid and a properly executed and signed biennial report is due to be filed. If such occupation taxes are not paid and the report is not filed by April 15 of each even-numbered year, (a) such taxes and report shall become delinquent, (b) the authority of the delinquent corporation to transact business in this state shall be administratively revoked on April 16 of such year for nonpayment of occupation taxes and failure to file the report, and (c) the delinquent occupation tax shall be a lien upon the assets of the corporation subject only to state, county, and municipal taxes.

(2) Upon the failure of any foreign corporation to pay its occupation tax and deliver the biennial report within the time limited by sections 21-301 to 21-330, the Secretary of State shall on April 16 of such year administratively revoke the authority of the corporation to transact business in this state for nonpayment of taxes and shall bar the corporation from doing business in this state under the corporation laws of this state and make such entry and showing upon the records of his or her office.

(3)(a) The Secretary of State shall administratively revoke the authority of a foreign corporation by signing a certificate of revocation of authority to transact business in this state that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under section 21-2,212.

(b) The authority of a foreign corporation to transact business in this state shall cease on the date shown on the certificate revoking its certificate of authority.

(c) Revocation of a foreign corporation's certificate of authority shall not terminate the authority of the registered agent of the corporation.

(4) All delinquent corporation occupation taxes of the foreign corporation shall be a lien upon the assets of the corporation within the state, subsequent only to state, county, and municipal taxes. Nothing in sections 21-322 to 21-330 shall be construed to allow a foreign corporation to do business in this state without complying with the laws of this state.

(5) No foreign corporation shall be voluntarily withdrawn until all occupation taxes due to or assessable by this state have been paid and the biennial report filed by such corporation.

Source: Laws 1913, c. 240, § 23, p. 752; R.S.1913, § 783; Laws 1921, c. 173, § 2, p. 668; C.S.1922, § 701; C.S.1929, § 24-1723; R.S.1943, § 21-325; Laws 1957, c. 242, § 11, p. 824; Laws 1967, c. 101,

§ 13, p. 316; Laws 1969, c. 124, § 10, p. 574; Laws 1982, LB 928, § 12; Laws 1995, LB 109, § 200; Laws 2002, LB 989, § 6; Laws 2003, LB 524, § 13; Laws 2014, LB749, § 256.

21-325.01 Foreign corporation authority to transact business revoked; reinstatement; procedure.

(1)(a) Until January 1, 2017, the provisions of this subsection apply. A foreign corporation, the certificate of authority of which has been revoked under section 21-325, may apply to the Secretary of State for reinstatement within five years after the effective date of the revocation. The application shall:

(i) Recite the name of the foreign corporation and the effective date of the revocation;

(ii) State that the ground or grounds for revocation either did not exist or have been eliminated;

(iii) State that the foreign corporation's name satisfies the requirements of section 21-20,173; and

(iv) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for reinstatement.

(b) If the Secretary of State determines (i) that the application contains the information required by subdivision (a) of this subsection and that the information is correct and (ii) that the foreign corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of revocation, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-20,177.

(c) A foreign corporation, the certificate of authority of which has been automatically revoked under section 21-325 for more than five years, may apply to the Secretary of State for late reinstatement. The application shall:

(i) Recite the name of the foreign corporation and the effective date of the revocation;

(ii) State that the ground or grounds for revocation either did not exist or have been eliminated;

(iii) State that the foreign corporation's name satisfies the requirements of section 21-20,173;

(iv) State that a legitimate reason exists for reinstatement and what such legitimate reason is;

(v) State that such reinstatement does not constitute fraud on the public; and

(vi) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for late reinstatement.

(d) If the Secretary of State determines (i) that the application for late reinstatement contains the information required by subdivision (c) of this subsection and that the information is correct and (ii) that the foreign corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of revocation, prepare a certificate of late reinstatement that recites his or her determination and the effective date of reinstatement, file the

original of the certificate, and serve a copy on the foreign corporation under section 21-20,177.

(e) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its business as if the revocation had never occurred.

(f) A foreign corporation applying for reinstatement under this subsection shall:

(i)(A) Pay to the Secretary of State a sum equal to all occupation taxes delinquent as of the effective date of the revocation, plus a sum equal to all occupation taxes which would otherwise have been due for the years the foreign corporation's certificate of authority was revoked; and (B) deliver to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(ii) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such foreign corporation's certificate of authority was revoked.

(2)(a) Beginning January 1, 2017, the provisions of this subsection apply. A foreign corporation, the certificate of authority of which has been administratively revoked under section 21-325, may apply to the Secretary of State for reinstatement within five years after the effective date of the revocation. The application shall:

(i) Recite the name of the foreign corporation and the effective date of the revocation;

(ii) State that the ground or grounds for revocation either did not exist or have been eliminated;

(iii) State that the foreign corporation's name satisfies the requirements of section 21-2,208; and

(iv) Be accompanied by a fee in the amount prescribed in section 21-205, as such section may from time to time be amended, for an application for reinstatement.

(b) If the Secretary of State determines (i) that the application contains the information required by subdivision (a) of this subsection and that the information is correct and (ii) that the foreign corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of revocation, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-2,212.

(c) A foreign corporation, the certificate of authority of which has been administratively revoked under section 21-325 for more than five years, may apply to the Secretary of State for late reinstatement. The application shall:

(i) Recite the name of the foreign corporation and the effective date of the revocation;

(ii) State that the ground or grounds for revocation either did not exist or have been eliminated;

(iii) State that the foreign corporation's name satisfies the requirements of section 21-2,208;

(iv) State that a legitimate reason exists for reinstatement and what such legitimate reason is;

(v) State that such reinstatement does not constitute fraud on the public; and

(vi) Be accompanied by a fee in the amount prescribed in section 21-205, as such section may from time to time be amended, for an application for late reinstatement.

(d) If the Secretary of State determines (i) that the application for late reinstatement contains the information required by subdivision (c) of this subsection and that the information is correct and (ii) that the foreign corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of revocation, prepare a certificate of late reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-2,212.

(e) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative revocation and the foreign corporation shall resume carrying on its business as if the administrative revocation had never occurred.

(f) A foreign corporation applying for reinstatement under this subsection shall:

(i)(A) Pay to the Secretary of State a sum equal to all occupation taxes delinquent as of the effective date of the revocation, plus a sum equal to all occupation taxes which would otherwise have been due for the years the foreign corporation's certificate of authority was revoked, and (B) deliver to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(ii) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such foreign corporation's certificate of authority was revoked.

Source: Laws 1995, LB 109, § 201; Laws 1996, LB 1036, § 2; Laws 2003, LB 524, § 14; Laws 2012, LB854, § 3; Laws 2014, LB749, § 257; Laws 2015, LB279, § 7.

21-325.02 Foreign corporation authority to transact business; reinstatement denied; appeal.

(1) If the Secretary of State denies a foreign corporation's application for reinstatement following administrative revocation of its certificate of authority under section 21-325, he or she shall serve the foreign corporation under section 21-2,212 with a written notice that explains the reason or reasons for denial.

(2) The foreign corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected under section 21-2,212. The foreign corporation shall appeal by petitioning the court to set aside the revocation and attaching to the petition copies of the Secretary of State's certificate of revocation, the foreign corporation's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 1996, LB 1036, § 3; Laws 2014, LB749, § 258.

21-328 Occupation tax; refund; procedure; appeal.

Any corporation paying the occupation tax imposed by section 21-303 or 21-306 may claim a refund if the payment of such occupation tax was invalid for any reason. The corporation shall file a written claim and any evidence supporting the claim within two years after payment of such occupation tax. The Secretary of State shall either approve or deny the claim within thirty days after such filing. Any approved claims shall be paid out of the General Fund. Appeal of a decision by the Secretary of State shall be in accordance with the Administrative Procedure Act.

Source: Laws 1984, LB 799, § 1; Laws 1988, LB 352, § 21; Laws 2014, LB749, § 259.

Cross References

Administrative Procedure Act, see section 84-920.

21-329 Paid-up capital stock, defined.

For purposes of sections 21-301 to 21-330, the term paid-up capital stock shall mean, at any particular time, the sum of the par value of all shares of capital stock of the corporation issued and outstanding.

Source: Laws 1984, LB 800, § 1; Laws 1995, LB 109, § 202; Laws 1999, LB 35, § 1; Laws 2014, LB749, § 260.

21-330 Corporations; excess payment; refund.

Any corporation which has paid occupation tax in excess of the proper amount of the occupation tax imposed in sections 21-301 to 21-330 shall be entitled to a refund of such excess payment. Claims for refund shall be filed with the Secretary of State or may be submitted by the Secretary of State based on his or her own investigation. If approved or submitted by the Secretary of State, the claim shall be forwarded to the State Treasurer for payment from the General Fund. The Secretary of State shall not refund any excess occupation tax payment if five years have passed from the date of the excess payment.

Source: Laws 1991, LB 829, § 25; Laws 1992, Fourth Spec. Sess., LB 1, § 1; Laws 1993, LB 345, § 1; Laws 1995, LB 182, § 21; Laws 2003, LB 524, § 15; Laws 2006, LB 647, § 3; Laws 2014, LB749, § 261.

ARTICLE 4

NEBRASKA BENEFIT CORPORATION ACT

Section

21-401. Act, how cited.

21-402. Applicability of act; Nebraska Model Business Corporation Act generally applicable.

21-403. Terms, defined.

21-404. Incorporation; articles of incorporation; statement required.

§ 21-401**CORPORATIONS AND OTHER COMPANIES**

Section

- 21-405. Existing business corporation; amend articles of incorporation; statement required; other entities; procedure.
- 21-406. Benefit corporation; terminate status; procedure.
- 21-407. General public benefit; specific public benefit.
- 21-408. Board of directors, committees of the board, and directors; duties; powers; liability.
- 21-409. Board of directors; benefit director; annual benefit report; contents; liability.
- 21-410. Officer; consider interests and factors; liability; duties.
- 21-411. Benefit officer; powers and duties.
- 21-412. Limitation on actions and claims; liability; benefit enforcement proceeding; when authorized.
- 21-413. Annual benefit report; contents.
- 21-414. Annual benefit report; distribution; posting; Secretary of State; filing; fee.

21-401 Act, how cited.

Sections 21-401 to 21-414 shall be known and may be cited as the Nebraska Benefit Corporation Act.

Source: Laws 2014, LB751, § 1.

21-402 Applicability of act; Nebraska Model Business Corporation Act generally applicable.

- (1) The Nebraska Benefit Corporation Act applies to all benefit corporations.
- (2) The existence of a provision of the Nebraska Benefit Corporation Act does not of itself create an implication that a contrary or different rule of law is applicable to a business corporation that is not a benefit corporation. The act does not affect a statute or rule of law that is applicable to a business corporation that is not a benefit corporation.
- (3) Except as otherwise provided in the Nebraska Benefit Corporation Act, the Nebraska Model Business Corporation Act is generally applicable to all benefit corporations. The specific provisions of the Nebraska Benefit Corporation Act control over the general provisions of the Nebraska Model Business Corporation Act. A benefit corporation may be subject simultaneously to the Nebraska Benefit Corporation Act and one or more other statutes that provide for the incorporation of a specific type of business corporation.
- (4) A provision of the articles of incorporation or bylaws of a benefit corporation may not limit, be inconsistent with, or supersede a provision of the Nebraska Benefit Corporation Act.

Source: Laws 2014, LB751, § 2; Laws 2015, LB35, § 1.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-403 Terms, defined.

The following words and phrases when used in the Nebraska Benefit Corporation Act have the meanings given to them in this section unless the context clearly indicates otherwise:

- (1) Benefit corporation means a business corporation:
- (a) Which has elected to become subject to the act; and
- (b) The status of which as a benefit corporation has not been terminated;

(2) Benefit director means the director designated as the benefit director of a benefit corporation under section 21-409;

(3) Benefit enforcement proceeding means any claim or action or proceeding for:

(a) Failure of a benefit corporation to pursue or create general public benefit or a specific public benefit purpose set forth in its articles of incorporation; or

(b) Violation of any obligation, duty, or standard of conduct under the act;

(4) Benefit officer means the officer designated as the benefit officer of a benefit corporation under section 21-411;

(5) Business corporation means a domestic corporation as defined in section 21-214;

(6) General public benefit means a material positive impact on society and the environment, taken as a whole, assessed against a third-party standard, from the business and operations of a benefit corporation;

(7) Independent means having no material relationship with a benefit corporation or a subsidiary of the benefit corporation. Serving as benefit director or benefit officer does not make an individual not independent. A material relationship between an individual and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if:

(a) The individual is, or has been within the last three years, an employee other than a benefit officer of the benefit corporation or a subsidiary;

(b) An immediate family member of the individual is, or has been within the last three years, an executive officer other than a benefit officer of the benefit corporation or a subsidiary; or

(c) There is beneficial or record ownership of five percent or more of the outstanding shares of the benefit corporation, calculated as if all outstanding rights to acquire equity interests in the benefit corporation had been exercised, by:

(i) The individual; or

(ii) An entity:

(A) Of which the individual is a director, an officer, or a manager; or

(B) In which the individual owns beneficially or of record five percent or more of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised;

(8) Minimum status vote means:

(a) In the case of a business corporation, in addition to any other required approval or vote, the satisfaction of the following conditions:

(i) The shareholders of every class or series are entitled to vote separately on a corporate action regardless of a limitation stated in the articles of incorporation or bylaws on the voting rights of any class or series; and

(ii) The corporate action must be approved by a vote of the shareholders of each class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or series are entitled to cast on the action; and

(b) In the case of a domestic entity other than a business corporation, in addition to any other required approval, vote, or consent, the satisfaction of the following conditions:

(i) The holders of every class or series of equity interests in the entity that are entitled to receive a distribution of any kind from the entity are entitled to vote separately on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of any class or series; and

(ii) The action must be approved by a vote or consent of the holders described in subdivision (i) of this subdivision entitled to cast at least two-thirds of the votes or consents that all of those holders are entitled to cast on the action;

(9) Publicly traded corporation means a business corporation that has shares listed on a national securities exchange or traded in a market maintained by one or more members of a national securities association;

(10) Specific public benefit includes:

(a) Providing low-income or underserved individuals or communities with beneficial products or services;

(b) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(c) Protecting or restoring the environment;

(d) Improving human health;

(e) Promoting the arts, sciences, or advancement of knowledge;

(f) Increasing the flow of capital to entities with a purpose to benefit society or the environment; and

(g) Conferring any other particular benefit on society or the environment;

(11) Subsidiary means in relation to a person, an entity in which the person owns beneficially or of record fifty percent or more of the outstanding equity interests; and

(12) Third-party standard means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that is:

(a) Comprehensive because it assesses the effect of the business and its operations upon the interests listed in subdivisions (1)(a)(ii), (iii), (iv), and (v) of section 21-408;

(b) Developed by an entity that is not controlled by the benefit corporation;

(c) Credible because it is developed by an entity that both:

(i) Has access to necessary expertise to assess overall corporate social and environmental performance; and

(ii) Uses a balanced multistakeholder approach to develop the standard, including a reasonable public comment period; and

(d) Transparent because the following information is publicly available:

(i) About the standard:

(A) The criteria considered when measuring the overall social and environmental performance of a business; and

(B) The relative weightings, if any, of those criteria; and

(ii) About the development and revision of the standard:

(A) The identity of the directors, officers, material owners, and governing body of the entity that developed and controls revisions to the standard;

(B) The process by which revisions to the standard and changes to the membership of the governing body are made; and

(C) An accounting of the revenue and sources of financial support for the entity, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

Source: Laws 2014, LB751, § 3; Laws 2015, LB35, § 2.

21-404 Incorporation; articles of incorporation; statement required.

A benefit corporation shall be incorporated in accordance with the Nebraska Model Business Corporation Act, but its articles of incorporation must also state that it is a benefit corporation.

Source: Laws 2014, LB751, § 4; Laws 2015, LB35, § 3.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-405 Existing business corporation; amend articles of incorporation; statement required; other entities; procedure.

(1) An existing business corporation may become a benefit corporation under the Nebraska Benefit Corporation Act by amending its articles of incorporation so that they contain, in addition to the requirements of section 21-220, a statement that the corporation is a benefit corporation. In order to be effective, the amendment must be adopted by at least the minimum status vote.

(2) An entity that is not a benefit corporation may become a benefit corporation pursuant to subsection (1) of this section if the entity is (a) a party to a merger or conversion or (b) an exchanging entity in a share exchange, and the surviving, new, or resulting entity in the merger, conversion, or share exchange is to be a benefit corporation. In order to be effective, a plan of merger, conversion, or share exchange subject to this subsection must be adopted by at least the minimum status vote.

Source: Laws 2014, LB751, § 5; Laws 2015, LB35, § 4.

21-406 Benefit corporation; terminate status; procedure.

(1) A benefit corporation may terminate its status as such and cease to be subject to the Nebraska Benefit Corporation Act by amending its articles of incorporation to delete the provision required by section 21-404 or 21-405 to be stated in the articles of a benefit corporation. In order to be effective, the amendment must be adopted by at least the minimum status vote.

(2) If a plan of merger, conversion, or share exchange would have the effect of terminating the status of a business corporation as a benefit corporation, the plan must be adopted by at least the minimum status vote in order to be effective. Any sale, lease, exchange, or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and regular course of business, is not effective unless the transaction is approved by at least the minimum status vote.

Source: Laws 2014, LB751, § 6.

21-407 General public benefit; specific public benefit.

(1) A benefit corporation shall have a purpose of creating general public benefit. This purpose is in addition to its purpose under section 21-226.

(2) The articles of incorporation of a benefit corporation may identify one or more specific public benefits that it is the purpose of the benefit corporation to create in addition to its purposes under section 21-226 and subsection (1) of this section. The identification of a specific public benefit under this subsection does not limit the purpose of a benefit corporation to create general public benefit under subsection (1) of this section.

(3) The creation of general public benefit and specific public benefit under subsections (1) and (2) of this section is in the best interests of the benefit corporation.

(4) A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit that it is the purpose of the benefit corporation to create. In order to be effective, the amendment must be adopted by at least the minimum status vote.

Source: Laws 2014, LB751, § 7; Laws 2015, LB35, § 5.

21-408 Board of directors, committees of the board, and directors; duties; powers; liability.

(1) In discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees of the board, and individual directors of a benefit corporation:

(a) Shall consider the effects of any action or inaction upon:

(i) The shareholders of the benefit corporation;

(ii) The employees and work force of the benefit corporation, its subsidiaries, and its suppliers;

(iii) The interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation;

(iv) Community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;

(v) The local and global environment;

(vi) The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation; and

(vii) The ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose;

(b) May consider other pertinent factors or the interests of any other group that they deem appropriate; and

(c) Need not give priority to the interests of a particular person or group referred to in subdivision (a) or (b) of this subsection over the interests of any other person or group unless the benefit corporation has stated in its articles of incorporation its intention to give priority to certain interests related to its accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in its articles of incorporation.

(2) The consideration of interests and factors in the manner required by subsection (1) of this section does not constitute a violation of section 21-2,102.

(3) Except as provided in the articles of incorporation or bylaws, a director is not personally liable for monetary damages for:

(a) Any action or inaction in the course of performing the duties of a director under subsection (1) of this section if the director performed the duties of office in compliance with section 21-2,102 and this section; or

(b) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

(4) A director does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

(5) A director who makes a business judgment in good faith fulfills the duty under this section if the director:

(a) Is not interested in the subject of the business judgment;

(b) Is informed with respect to the subject of the business judgment to the extent the director reasonably believes to be appropriate under the circumstances; and

(c) Rationally believes that the business judgment is in the best interests of the benefit corporation.

Source: Laws 2014, LB751, § 8; Laws 2015, LB35, § 6.

21-409 Board of directors; benefit director; annual benefit report; contents; liability.

(1) The board of directors of a benefit corporation that is a publicly traded corporation shall, and the board of any other benefit corporation may, include a director, who:

(a) Shall be designated the benefit director; and

(b) Shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

(2) The benefit director shall be elected and may be removed in the manner provided by the Nebraska Model Business Corporation Act. The benefit director shall be an individual who is independent. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this subsection.

(3) The benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required by section 21-413, the opinion of the benefit director on all of the following:

(a) Whether the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the benefit report;

(b) Whether the directors and officers complied with subsection (1) of section 21-408 and subsection (1) of section 21-410, respectively; and

(c) If, in the opinion of the benefit director, the benefit corporation or its directors or officers failed to act or comply in the manner described in subdivisions (3)(a) and (b) of this subsection, a description of the ways in which the benefit corporation or its directors or officers failed to act or comply.

(4) The action or inaction of an individual in the capacity of a benefit director constitutes for all purposes an action or inaction of that individual in the capacity of a director of the benefit corporation.

(5) Regardless of whether the articles of incorporation or bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by section 21-220, a benefit director is not personally liable for an act or omission in the capacity of a benefit director unless the act or omission constitutes self-dealing, willful misconduct, or a knowing violation of law.

Source: Laws 2014, LB751, § 9; Laws 2015, LB35, § 7.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-410 Officer; consider interests and factors; liability; duties.

(1) Each officer of a benefit corporation shall consider the interests and factors described in subsection (1) of section 21-408 in the manner provided in that subsection if:

(a) The officer has discretion to act with respect to a matter; and

(b) It reasonably appears to the officer that the matter may have a material effect on the creation by the benefit corporation of general public benefit or a specific public benefit identified in the articles of incorporation of the benefit corporation.

(2) The consideration of interests and factors in the manner described in subsection (1) of this section does not constitute a violation of section 21-2,107.

(3) Except as provided in the articles of incorporation or bylaws, an officer is not personally liable for monetary damages for:

(a) An action or inaction as an officer in the course of performing the duties of an officer under subsection (1) of this section if the officer performed the duties of the position in compliance with section 21-2,107 and this section; or

(b) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

(4) An officer does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

(5) An officer who makes a business judgment in good faith fulfills the duty under this section if the officer:

(a) Is not interested in the subject of the business judgment;

(b) Is informed with respect to the subject of the business judgment to the extent the officer reasonably believes to be appropriate under the circumstances; and

(c) Rationally believes that the business judgment is in the best interests of the benefit corporation.

Source: Laws 2014, LB751, § 10; Laws 2015, LB35, § 8.

21-411 Benefit officer; powers and duties.

(1) A benefit corporation may have an officer designated the benefit officer.

(2) A benefit officer shall have:

(a) The powers and duties relating to the purpose of the corporation to create general public benefit or specific public benefit provided:

- (i) By the bylaws; or
 - (ii) Absent controlling provisions in the bylaws, by resolutions or orders of the board of directors; and
- (b) The duty to prepare the annual benefit report required by section 21-413.

Source: Laws 2014, LB751, § 11.

21-412 Limitation on actions and claims; liability; benefit enforcement proceeding; when authorized.

(1)(a) Except in a benefit enforcement proceeding, no person may bring an action or assert a claim against a benefit corporation or its directors or officers with respect to:

- (i) Failure to pursue or create general public benefit or a specific public benefit set forth in its articles of incorporation; or
- (ii) Violation of an obligation, duty, or standard of conduct under the Nebraska Benefit Corporation Act.

(b) A benefit corporation is not liable for monetary damages under the act for any failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

(2) A benefit enforcement proceeding may be commenced or maintained only:

- (a) Directly by the benefit corporation; or
- (b) Derivatively in accordance with the Nebraska Model Business Corporation Act by:
 - (i) A person or group of persons that owned beneficially or of record at least two percent of the total number of shares of a class or series outstanding at the time of the act or omission complained of;
 - (ii) A director;
 - (iii) A person or group of persons that owned beneficially or of record five percent or more of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary at the time of the act or omission complained of; or
 - (iv) Other persons as specified in the articles of incorporation or bylaws of the benefit corporation.

(3) For purposes of this section, a person is the beneficial owner of shares or equity interests if the shares or equity interests are held in a voting trust or by a nominee on behalf of the beneficial owner.

Source: Laws 2014, LB751, § 12; Laws 2015, LB35, § 9.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-413 Annual benefit report; contents.

(1) A benefit corporation shall prepare an annual benefit report including all of the following:

- (a) A narrative description of:

(i) The ways in which the benefit corporation pursued general public benefit during the year and the extent to which general public benefit was created;

(ii) Both:

(A) The ways in which the benefit corporation pursued a specific public benefit that the articles of incorporation state it is the purpose of the benefit corporation to create; and

(B) The extent to which that specific public benefit was created;

(iii) Any circumstances that have hindered the creation by the benefit corporation of general public benefit or specific public benefit; and

(iv) The process and rationale for selecting or changing the third-party standard used to prepare the benefit report;

(b) An assessment of the overall social and environmental performance of the benefit corporation against a third-party standard:

(i) Applied consistently with any application of that standard in prior benefit reports; or

(ii) Accompanied by an explanation of the reasons for:

(A) Any inconsistent application; or

(B) The change to that standard from the one used in the immediately prior benefit report;

(c) The name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed;

(d) The compensation paid by the benefit corporation during the year to each director in the capacity of a director;

(e) The statement of the benefit director described in subsection (3) of section 21-409; and

(f) A statement of any connection between the organization that established the third-party standard, or its directors, officers, or any holder of five percent or more of the governance interests in the organization, and the benefit corporation or its directors, officers, or any holder of five percent or more of the outstanding shares of the benefit corporation, including any financial or governance relationship which might materially affect the credibility of the use of the third-party standard.

(2) If, during the year covered by a benefit report, a benefit director resigned from or refused to stand for reelection to the position of benefit director, or was removed from the position of benefit director, and the benefit director furnished the benefit corporation with any written correspondence concerning the circumstances surrounding the resignation, refusal, or removal, the benefit report shall include that correspondence as an exhibit.

(3) Neither the benefit report nor the assessment of the performance of the benefit corporation in the benefit report required by subdivision (1)(b) of this section needs to be audited or certified by a third-party standards provider.

Source: Laws 2014, LB751, § 13.

21-414 Annual benefit report; distribution; posting; Secretary of State; filing; fee.

(1) A benefit corporation shall send its annual benefit report to each shareholder:

(a) Within one hundred twenty days following the end of the fiscal year of the benefit corporation; or

(b) At the same time that the benefit corporation delivers any other annual report to its shareholders.

(2) A benefit corporation shall post all of its benefit reports on the public portion of its Internet web site, if any, except that the compensation paid to directors and financial or proprietary information included in the benefit reports may be omitted from the benefit reports as posted.

(3) If a benefit corporation does not have an Internet web site, the benefit corporation shall provide a copy of its most recent benefit report, without charge, to any person that requests a copy, except that the compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the copy of the benefit report provided.

(4)(a) Concurrently with the delivery of the benefit report to shareholders under subsection (1) of this section, the benefit corporation shall deliver a copy of the benefit report to the Secretary of State for filing, except that the compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the benefit report as delivered to the Secretary of State.

(b) The Secretary of State shall charge a fee in the amount prescribed in subdivision (a)(12) of section 21-205 for filing a benefit report. The Secretary of State shall collect the fees imposed in this section and remit the fees to the State Treasurer. The State Treasurer shall credit sixty percent of the fees to the General Fund and forty percent of the fees to the Secretary of State Cash Fund.

Source: Laws 2014, LB751, § 14; Laws 2015, LB35, § 10; Laws 2015, LB279, § 8; Laws 2020, LB910, § 6.
Operative date July 1, 2021.

ARTICLE 5

NEBRASKA UNIFORM PROTECTED SERIES ACT

Cross References

Nebraska Uniform Limited Liability Company Act, see section 21-101.

(a) GENERAL PROVISIONS

Section

- 21-501. Short title.
- 21-502. Definitions.
- 21-503. Nature of protected series.
- 21-504. Powers and duration of protected series.
- 21-505. Governing law.
- 21-506. Relation of operating agreement, this act, and Nebraska Uniform Limited Liability Company Act.
- 21-507. Additional limitations on operating agreement.
- 21-508. Rules for applying Nebraska Uniform Limited Liability Company Act to specified provisions of act.

(b) ESTABLISHING PROTECTED SERIES

- 21-509. Protected series designation; amendment.
- 21-510. Name.
- 21-511. Registered agent.
- 21-512. Service of process, notice, demand, or other record.
- 21-513. Certificate of existence for protected series; certificate of authority for foreign protected series.

§ 21-501

CORPORATIONS AND OTHER COMPANIES

Section

21-514. Information required in biennial report; effect of failure to provide.

(c) ASSOCIATED ASSET; ASSOCIATED MEMBER; PROTECTED-SERIES TRANSFERABLE INTEREST; MANAGEMENT; RIGHT OF INFORMATION

21-515. Associated asset.

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21-518. Management.

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(d) LIMITATION ON LIABILITY AND ENFORCEMENT OF CLAIMS

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(h) MISCELLANEOUS PROVISIONS

21-539. Uniformity of application and construction.

21-540. Relation to Electronic Signatures in Global and National Commerce Act.

21-541. Repealed. Laws 2019, LB78, § 24.

21-542. Savings clause.

(a) GENERAL PROVISIONS

21-501 Short title.

Sections 21-501 to 21-542 shall be known and may be cited as the Nebraska Uniform Protected Series Act.

Source: Laws 2018, LB1121, § 2.

Operative date January 1, 2021.

21-502 Definitions.

In the Nebraska Uniform Protected Series Act:

- (1) Asset means property:
- (A) in which a series limited liability company or protected series has rights; or
- (B) as to which the company or protected series has the power to transfer rights.
- (2) Associated asset means an asset that meets the requirements of section 21-515.
- (3) Associated member means a member that meets the requirements of section 21-516.
- (4) Foreign protected series means an arrangement, configuration, or other structure established by a foreign limited liability company which has attributes comparable to a protected series established under the act. The term applies whether or not the law under which the foreign company is organized refers to protected series.
- (5) Foreign series limited liability company means a foreign limited liability company that has at least one foreign protected series.
- (6) Nonassociated asset means:
- (A) an asset of a series limited liability company which is not an associated asset of the company; or
- (B) an asset of a protected series of the company which is not an associated asset of the protected series.
- (7) Person includes a protected series.
- (8) Protected series, except in the phrase foreign protected series, means a protected series established under section 21-509.
- (9) Protected-series manager means a person under whose authority the powers of a protected series are exercised and under whose direction the activities and affairs of the protected series are managed under the operating agreement, the Nebraska Uniform Protected Series Act, and the Nebraska Uniform Limited Liability Company Act.
- (10) Protected-series transferable interest means a right to receive a distribution from a protected series.
- (11) Protected-series transferee means a person to which all or part of a protected-series transferable interest of a protected series of a series limited liability company has been transferred, other than the company. The term includes a person that owns a protected-series transferable interest as a result of ceasing to be an associated member of a protected series.
- (12) Series limited liability company, except in the phrase foreign series limited liability company, means a limited liability company that has at least one protected series.

Source: Laws 2018, LB1121, § 3.
Operative date January 1, 2021.

21-503 Nature of protected series.

A protected series of a series limited liability company is a person distinct from:

- (1) the company, subject to subsection (c) of section 21-504, subdivision (1) of section 21-524, and subsection (d) of section 21-525;

- (2) another protected series of the company;
- (3) a member of the company, whether or not the member is an associated member of the protected series;
- (4) a protected-series transferee of a protected series of the company; and
- (5) a transferee of a transferable interest of the company.

Source: Laws 2018, LB1121, § 4.

Operative date January 1, 2021.

21-504 Powers and duration of protected series.

(a) A protected series of a series limited liability company has the capacity to sue and be sued in its own name.

(b) Except as otherwise provided in subsections (c) and (d) of this section, a protected series of a series limited liability company has the same powers and purposes as the company.

(c) A protected series of a series limited liability company ceases to exist not later than when the company completes its winding up.

(d) A protected series of a series limited liability company may not:

- (1) be a member of the company;
- (2) establish a protected series; or
- (3) except as permitted by law of this state other than the Nebraska Uniform Protected Series Act, have a purpose or power that the law of this state other than the Nebraska Uniform Protected Series Act prohibits a limited liability company from doing or having.

Source: Laws 2018, LB1121, § 5.

Operative date January 1, 2021.

21-505 Governing law.

The law of this state governs:

(1) the internal affairs of a protected series of a series limited liability company, including:

- (A) relations among any associated members of the protected series;
- (B) relations among the protected series and:
 - (i) any associated member;
 - (ii) the protected-series manager; or
 - (iii) any protected-series transferee;
- (C) relations between any associated member and:
 - (i) the protected-series manager; or
 - (ii) any protected-series transferee;
- (D) the rights and duties of a protected-series manager;
- (E) governance decisions affecting the activities and affairs of the protected series and the conduct of those activities and affairs; and
- (F) procedures and conditions for becoming an associated member or protected-series transferee;

(2) the relations between a protected series of a series limited liability company and each of the following:

- (A) the company;
 - (B) another protected series of the company;
 - (C) a member of the company which is not an associated member of the protected series;
 - (D) a protected-series manager that is not a protected-series manager of the protected series; and
 - (E) a protected-series transferee that is not a protected-series transferee of the protected series;
- (3) the liability of a person for a debt, obligation, or other liability of a protected series of a series limited liability company if the debt, obligation, or liability is asserted solely by reason of the person being or acting as:
- (A) an associated member, protected-series transferee, or protected-series manager of the protected series;
 - (B) a member of the company which is not an associated member of the protected series;
 - (C) a protected-series manager that is not a protected-series manager of the protected series;
 - (D) a protected-series transferee that is not a protected-series transferee of the protected series;
 - (E) a manager of the company; or
 - (F) a transferee of a transferable interest of the company;
- (4) the liability of a series limited liability company for a debt, obligation, or other liability of a protected series of the company if the debt, obligation, or liability is asserted solely by reason of the company:
- (A) having delivered to the Secretary of State for filing under subsection (b) of section 21-509 a protected-series designation pertaining to the protected series or under subsection (d) of section 21-509 or subsection (c) of section 21-510 a statement of designation change pertaining to the protected series;
 - (B) being or acting as a protected-series manager of the protected series;
 - (C) having the protected series be or act as a manager of the company; or
 - (D) owning a protected-series transferable interest of the protected series;
- and
- (5) the liability of a protected series of a series limited liability company for a debt, obligation, or other liability of the company or of another protected series of the company if the debt, obligation, or liability is asserted solely by reason of:
- (A) the protected series:
 - (i) being a protected series of the company or having as a protected-series manager the company or another protected series of the company; or
 - (ii) being or acting as a protected-series manager of another protected series of the company or a manager of the company; or
 - (B) the company owning a protected-series transferable interest of the protected series.

Source: Laws 2018, LB1121, § 6.
Operative date January 1, 2021.

21-506 Relation of operating agreement, this act, and Nebraska Uniform Limited Liability Company Act.

(a) Except as otherwise provided in this section and subject to sections 21-507 and 21-508, the operating agreement of a series limited liability company governs:

(1) the internal affairs of a protected series, including:

(A) relations among any associated members of the protected series;

(B) relations among the protected series and:

(i) any associated member;

(ii) the protected-series manager; or

(iii) any protected-series transferee;

(C) relations between any associated member and:

(i) the protected-series manager; or

(ii) any protected-series transferee;

(D) the rights and duties of a protected-series manager;

(E) governance decisions affecting the activities and affairs of the protected series and the conduct of those activities and affairs; and

(F) procedures and conditions for becoming an associated member or protected-series transferee;

(2) relations among the protected series, the company, and any other protected series of the company;

(3) relations between:

(A) the protected series, its protected-series manager, any associated member of the protected series, or any protected-series transferee of the protected series; and

(B) a person in the person's capacity as:

(i) a member of the company which is not an associated member of the protected series;

(ii) a protected-series transferee or protected-series manager of another protected series; or

(iii) a transferee of the company.

(b) If the Nebraska Uniform Limited Liability Company Act restricts the power of an operating agreement to affect a matter, the restriction applies to a matter under the Nebraska Uniform Protected Series Act in accordance with section 21-508.

(c) If law of this state other than the Nebraska Uniform Protected Series Act imposes a prohibition, limitation, requirement, condition, obligation, liability, or other restriction on a limited liability company, a member, manager, or other agent of the company, or a transferee of the company, except as otherwise provided in law of this state other than the Nebraska Uniform Protected Series Act, the restriction applies in accordance with section 21-508.

(d) Except as otherwise provided in section 21-507, if the operating agreement of a series limited liability company does not provide for a matter described in subsection (a) of this section in a manner permitted by the Nebraska Uniform Protected Series Act, the matter is determined in accordance with the following rules:

(1) To the extent the Nebraska Uniform Protected Series Act addresses the matter, the Nebraska Uniform Protected Series Act governs.

(2) To the extent the Nebraska Uniform Protected Series Act does not address the matter, the Nebraska Uniform Limited Liability Company Act governs the matter in accordance with section 21-508.

Source: Laws 2018, LB1121, § 7.
Operative date January 1, 2021.

21-507 Additional limitations on operating agreement.

(a) An operating agreement may not vary the effect of:

- (1) this section;
- (2) section 21-503;
- (3) subsection (a) of section 21-504;
- (4) subsection (b) of section 21-504 to provide a protected series a power beyond the powers the Nebraska Uniform Limited Liability Company Act provides a limited liability company;
- (5) subsection (c) or (d) of section 21-504;
- (6) section 21-505;
- (7) section 21-506;
- (8) section 21-508;
- (9) section 21-509, except to vary the manner in which a limited liability company approves establishing a protected series;
- (10) section 21-510;
- (11) section 21-515;
- (12) section 21-516;
- (13) subsection (a) or (b) of section 21-517;
- (14) subsection (c) or (f) of section 21-518;
- (15) section 21-520, except to decrease or eliminate a limitation of liability stated in section 21-520;
- (16) section 21-521;
- (17) section 21-522;
- (18) section 21-523;
- (19) subdivisions (1), (4), and (5) of section 21-524;
- (20) section 21-525, except to designate a different person to manage winding up;
- (21) section 21-526;
- (22) sections 21-527 to 21-534;
- (23) sections 21-535 to 21-538;
- (24) section 21-542; or
- (25) a provision of the Nebraska Uniform Protected Series Act pertaining to:
 - (A) registered agents; or
 - (B) the Secretary of State, including provisions pertaining to records authorized or required to be delivered to the Secretary of State for filing under the act.

(b) An operating agreement may not unreasonably restrict the duties and rights under section 21-519 but may impose reasonable restrictions on the availability and use of information obtained under section 21-519 and may provide appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use.

Source: Laws 2018, LB1121, § 8; Laws 2019, LB78, § 3.
Operative date January 1, 2021.

21-508 Rules for applying Nebraska Uniform Limited Liability Company Act to specified provisions of act.

(a) Except as otherwise provided in subsection (b) of this section and section 21-507, the following rules apply in applying section 21-506, subsections (c) and (f) of section 21-518, subdivision (4)(A) of section 21-524, subsection (a) of section 21-525, and subdivision (2) of section 21-526:

(1) A protected series of a series limited liability company is deemed to be a limited liability company that is formed separately from the series limited liability company and is distinct from the series limited liability company and any other protected series of the series limited liability company.

(2) An associated member of the protected series is deemed to be a member of the company deemed to exist under subdivision (a)(1) of this section.

(3) A protected-series transferee of the protected series is deemed to be a transferee of the company deemed to exist under subdivision (a)(1) of this section.

(4) A protected-series transferable interest of the protected series is deemed to be a transferable interest of the company deemed to exist under subdivision (a)(1) of this section.

(5) A protected-series manager is deemed to be a manager of the company deemed to exist under subdivision (a)(1) of this section.

(6) An asset of the protected series is deemed to be an asset of the company deemed to exist under subdivision (a)(1) of this section, whether or not the asset is an associated asset of the protected series.

(7) Any creditor or other obligee of the protected series is deemed to be a creditor or obligee of the company deemed to exist under subdivision (a)(1) of this section.

(b) Subsection (a) of this section does not apply if its application would:

(1) contravene section 21-110; or

(2) authorize or require the Secretary of State to:

(A) accept for filing a type of record that neither the Nebraska Uniform Protected Series Act nor the Nebraska Uniform Limited Liability Company Act authorizes or requires a person to deliver to the Secretary of State for filing; or

(B) make or deliver a record that neither the Nebraska Uniform Protected Series Act nor the Nebraska Uniform Limited Liability Company Act authorizes or requires the Secretary of State to make or deliver.

Source: Laws 2018, LB1121, § 9.
Operative date January 1, 2021.

(b) ESTABLISHING PROTECTED SERIES

21-509 Protected series designation; amendment.

(a) With the affirmative vote or consent of all members of a limited liability company, the company may establish a protected series.

(b) To establish one or more protected series, a limited liability company shall deliver to the Secretary of State for filing a protected-series designation, signed by the company, stating the name of the company and the name or names of the protected series to be established.

(c) A protected series is established when the protected-series designation takes effect under section 21-121.

(d) To amend a protected-series designation, a series limited liability company shall deliver to the Secretary of State for filing a statement of designation change, signed by the company, that changes the name of the company, the name or names of the protected series to which the designation applies, or both. The change takes effect when the statement of designation change takes effect under section 21-121.

Source: Laws 2018, LB1121, § 10; Laws 2019, LB78, § 4.
Operative date January 1, 2021.

21-510 Name.

(a) Except as otherwise provided in subsection (b) of this section, the name of a protected series must be distinguishable in the records of the Secretary of State from:

(1) the name of each person that is not an individual and that is incorporated, organized, or authorized to transact business in this state; and

(2) each name reserved under section 21-109 or other state laws allowing the reservation or registration of business names, including fictitious or assumed name statutes.

(b) The name of a protected series of a series limited liability company must:

(1) begin with the name of the company, including any word or abbreviation required by section 21-108; and

(2) contain the phrase Protected Series or protected series or the abbreviation P.S. or PS.

(c) If a series limited liability company changes its name, the company shall deliver to the Secretary of State for filing a statement of designation change for the company's protected series, changing the name of each protected series to comply with this section.

Source: Laws 2018, LB1121, § 11; Laws 2019, LB78, § 5.
Operative date January 1, 2021.

21-511 Registered agent.

(a) The registered agent in this state for a series limited liability company is the registered agent in this state for each protected series of the company.

(b) Before delivering a protected-series designation to the Secretary of State for filing, a limited liability company shall agree with a registered agent that the agent will serve as the registered agent in this state for both the company and the protected series.

(c) A person that signs a protected-series designation delivered to the Secretary of State for filing affirms as a fact that the limited liability company on whose behalf the designation is delivered has complied with subsection (b) of this section.

(d) A person that ceases to be the registered agent for a series limited liability company ceases to be the registered agent for each protected series of the company.

(e) A person that ceases to be the registered agent for a protected series of a series limited liability company, other than as a result of the termination of the protected series, ceases to be the registered agent of the company and any other protected series of the company.

(f) Except as otherwise agreed by a series limited liability company and its registered agent, the agent is not obligated to distinguish between a process, notice, demand, or other record concerning the company and a process, notice, demand, or other record concerning a protected series of the company.

Source: Laws 2018, LB1121, § 12.

Operative date January 1, 2021.

21-512 Service of process, notice, demand, or other record.

(a) A protected series of a series limited liability company may be served with a process, notice, demand, or other record required or permitted by law by:

- (1) serving the company;
- (2) serving the registered agent of the protected series; or
- (3) other means authorized by law of this state other than the Nebraska Uniform Limited Liability Company Act.

(b) Service of a summons and complaint on a series limited liability company is notice to each protected series of the company of service of the summons and complaint and the contents of the complaint.

(c) Service of a summons and complaint on a protected series of a series limited liability company is notice to the company and any other protected series of the company of service of the summons and complaint and the contents of the complaint.

(d) Service of a summons and complaint on a foreign series limited liability company is notice to each foreign protected series of the foreign company of service of the summons and complaint and the contents of the complaint.

(e) Service of a summons and complaint on a foreign protected series of a foreign series limited liability company is notice to the foreign company and any other foreign protected series of the company of service of the summons and complaint and the contents of the complaint.

(f) Notice to a person under subsection (b), (c), (d), or (e) of this section is effective whether or not the summons and complaint identify the person if the summons and complaint name as a party and identify:

- (1) the series limited liability company or a protected series of the company;
- or

(2) the foreign series limited liability company or a foreign protected series of the foreign company.

Source: Laws 2018, LB1121, § 13.
Operative date January 1, 2021.

21-513 Certificate of existence for protected series; certificate of authority for foreign protected series.

(a) On request of any person, the Secretary of State shall issue a certificate of existence for a protected series of a series limited liability company or a certificate of authority for a foreign protected series if:

(1) in the case of a protected series:

(A) no statement of dissolution, termination, or relocation pertaining to the protected series has been filed; and

(B) the company has delivered to the Secretary of State for filing the most recent biennial report required by section 21-125 and the report includes the name of the protected series, unless:

(i) when the company delivered the report for filing, the protected series designation pertaining to the protected series had not yet taken effect; or

(ii) after the company delivered the report for filing, the company delivered to the Secretary of State for filing a statement of designation change changing the name of the protected series; or

(2) in the case of a foreign protected series, it is authorized to do business in this state.

(b) A certificate issued under subsection (a) of this section must state:

(1) in the case of a protected series:

(A) the name of the protected series of the series limited liability company and the name of the company;

(B) that the requirements of subsection (a) of this section are met;

(C) the date the protected-series designation pertaining to the protected series took effect; and

(D) if a statement of designation change pertaining to the protected series has been filed, the effective date and contents of the statement;

(2) in the case of a foreign protected series, that it is authorized to do business in this state;

(3) that the fees, taxes, interest, and penalties owed to this state by the protected series or foreign protected series and collected through the Secretary of State have been paid, if:

(A) payment is reflected in the records of the Secretary of State; and

(B) nonpayment affects the good standing of the protected series; and

(4) other facts reflected in the records of the Secretary of State pertaining to the protected series or foreign protected series which the person requesting the certificate reasonably requests.

(c) Subject to any qualification stated by the Secretary of State in a certificate issued under subsection (a) of this section, the certificate may be relied on as conclusive evidence of the facts stated in the certificate.

Source: Laws 2018, LB1121, § 14; Laws 2019, LB78, § 6.
Operative date January 1, 2021.

21-514 Information required in biennial report; effect of failure to provide.

(a) In the biennial report required by section 21-125, a series limited liability company shall include the name of each protected series of the company:

(1) for which the company has previously delivered to the Secretary of State for filing a protected-series designation; and

(2) which has not dissolved and completed winding up.

(b) A failure by a series limited liability company to comply with subsection (a) of this section with regard to a protected series prevents issuance of a certificate of existence pertaining to the protected series but does not otherwise affect the protected series.

Source: Laws 2018, LB1121, § 15; Laws 2019, LB78, § 7.
Operative date January 1, 2021.

(c) ASSOCIATED ASSET; ASSOCIATED MEMBER; PROTECTED-SERIES TRANSFERABLE INTEREST; MANAGEMENT; RIGHT OF INFORMATION

21-515 Associated asset.

(a) Only an asset of a protected series may be an associated asset of the protected series. Only an asset of a series limited liability company may be an associated asset of the company.

(b) An asset of a protected series of a series limited liability company is an associated asset of the protected series only if the protected series creates and maintains records that state the name of the protected series and describe the asset with sufficient specificity to permit a disinterested, reasonable individual to:

(1) identify the asset and distinguish it from any other asset of the protected series, any asset of the company, and any asset of any other protected series of the company;

(2) determine when and from what person the protected series acquired the asset or how the asset otherwise became an asset of the protected series; and

(3) if the protected series acquired the asset from the company or another protected series of the company, determine any consideration paid, the payor, and the payee.

(c) An asset of a series limited liability company is an associated asset of the company only if the company creates and maintains records that state the name of the company and describe the asset with sufficient specificity to permit a disinterested, reasonable individual to:

(1) identify the asset and distinguish it from any other asset of the company and any asset of any protected series of the company;

(2) determine when and from what person the company acquired the asset or how the asset otherwise became an asset of the company; and

(3) if the company acquired the asset from a protected series of the company, determine any consideration paid, the payor, and the payee.

(d) The records and recordkeeping required by subsections (b) and (c) of this section may be organized by specific listing, category, type, quantity, or computational or allocational formula or procedure, including a percentage or share of any asset, or in any other reasonable manner.

(e) To the extent permitted by this section and law of this state other than the Nebraska Uniform Protected Series Act, a series limited liability company or protected series of the company may hold an associated asset directly or indirectly, through a representative, nominee, or similar arrangement, except that:

(1) a protected series may not hold an associated asset in the name of the company or another protected series of the company; and

(2) the company may not hold an associated asset in the name of a protected series of the company.

Source: Laws 2018, LB1121, § 16.

Operative date January 1, 2021.

21-516 Associated member.

(a) Only a member of a series limited liability company may be an associated member of a protected series of the company.

(b) A member of a series limited liability company becomes an associated member of a protected series of the company if the operating agreement or a procedure established by the agreement states:

(1) that the member is an associated member of the protected series;

(2) the date on which the member became an associated member; and

(3) any protected-series transferable interest the associated member has in connection with becoming or being an associated member.

(c) If a person that is an associated member of a protected series of a series limited liability company is dissociated from the company, the person ceases to be an associated member of the protected series.

Source: Laws 2018, LB1121, § 17.

Operative date January 1, 2021.

21-517 Protected-series transferable interest.

(a) A protected-series transferable interest of a protected series of a series limited liability company must be owned initially by an associated member of the protected series or the company.

(b) If a protected series of a series limited liability company has no associated members when established, the company owns the protected-series transferable interests in the protected series.

(c) In addition to acquiring a protected-series transferable interest under subsection (b) of this section, a series limited liability company may acquire a protected-series transferable interest through a transfer from another person or as provided in the operating agreement.

(d) Except for subdivision (a)(3) of section 21-508, a provision of the Nebraska Uniform Protected Series Act which applies to a protected-series transferee

of a protected series of a series limited liability company applies to the company in its capacity as an owner of a protected-series transferable interest of the protected series. A provision of the operating agreement of a series limited liability company which applies to a protected-series transferee of a protected series of the company applies to the company in its capacity as an owner of a protected-series transferable interest of the protected series.

Source: Laws 2018, LB1121, § 18; Laws 2019, LB78, § 8.
Operative date January 1, 2021.

21-518 Management.

- (a) A protected series may have more than one protected-series manager.
- (b) If a protected series has no associated members, the series limited liability company is the protected-series manager.
- (c) Section 21-508 applies to determine any duties of a protected-series manager of a protected series of a series limited liability company to:
 - (1) the protected series;
 - (2) any associated member of the protected series; and
 - (3) any protected-series transferee of the protected series.
- (d) Solely by reason of being or acting as a protected-series manager of a protected series of a series limited liability company, a person owes no duty to:
 - (1) the company;
 - (2) another protected series of the company; or
 - (3) another person in that person's capacity as:
 - (A) a member of the company which is not an associated member of the protected series;
 - (B) a protected-series transferee or protected-series manager of another protected series; or
 - (C) a transferee of the company.
- (e) An associated member of a protected series of a series limited liability company has the same rights as any other member of the company to vote on or consent to an amendment to the company's operating agreement or any other matter being decided by the members, whether or not the amendment or matter affects the interests of the protected series or the associated member.
- (f) Sections 21-164 to 21-169 apply to a protected series in accordance with section 21-508.

Source: Laws 2018, LB1121, § 19.
Operative date January 1, 2021.

21-519 Right of person not associated member of protected series to information concerning protected series.

- (a) A member of a series limited liability company which is not an associated member of a protected series of the company has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that a member that is not a manager of a manager-managed limited liability company has a right to information concerning the company under section 21-139.

(b) A person formerly an associated member of a protected series has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that a person dissociated as a member of a manager-managed limited liability company has a right to information concerning the company under section 21-139.

(c) If an associated member of a protected series dies, the legal representative of the deceased associated member has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that the legal representative of a deceased member of a limited liability company has a right to information concerning the company under section 21-139.

(d) A protected-series manager of a protected series has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that a manager of a manager-managed limited liability company has a right to information concerning the company under section 21-139.

Source: Laws 2018, LB1121, § 20.

Operative date January 1, 2021.

(d) LIMITATION ON LIABILITY AND ENFORCEMENT OF CLAIMS

21-520 Limitations on liability.

(a) A person is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of:

(1) a protected series of a series limited liability company solely by reason of being or acting as:

(A) an associated member, protected-series manager, or protected-series transferee of the protected series; or

(B) a member, manager, or a transferee of the company; or

(2) a series limited liability company solely by reason of being or acting as an associated member, protected-series manager, or protected-series transferee of a protected series of the company.

(b) Subject to section 21-523, the following rules apply:

(1) A debt, obligation, or other liability of a series limited liability company is solely the debt, obligation, or liability of the company.

(2) A debt, obligation, or other liability of a protected series is solely the debt, obligation, or liability of the protected series.

(3) A series limited liability company is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of a protected series of the company solely by reason of the protected series being a protected series of the company or the company:

(A) being or acting as a protected-series manager of the protected series;

(B) having the protected series manage the company; or

(C) owning a protected-series transferable interest of the protected series.

(4) A protected series of a series limited liability company is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the company or another protected series of the company solely by reason of:

- (A) being a protected series of the company;
- (B) being or acting as a manager of the company or a protected-series manager of another protected series of the company; or
- (C) having the company or another protected series of the company be or act as a protected-series manager of the protected series.

Source: Laws 2018, LB1121, § 21; Laws 2019, LB78, § 9.
Operative date January 1, 2021.

21-521 Claim seeking to disregard limitation of liability.

(a) Except as otherwise provided in subsection (b) of this section, a claim seeking to disregard a limitation in section 21-520 is governed by the principles of law and equity, including a principle providing a right to a creditor or holding a person liable for a debt, obligation, or other liability of another person, which would apply if each protected series of a series limited liability company were a limited liability company formed separately from the series limited liability company and distinct from the series limited liability company and any other protected series of the series limited liability company.

(b) The failure of a limited liability company or a protected series to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground to disregard a limitation in subsection (a) of section 21-520 but may be a ground to disregard a limitation in subsection (b) of section 21-520.

(c) This section applies to a claim seeking to disregard a limitation of liability applicable to a foreign series limited liability company or foreign protected series and comparable to a limitation stated in section 21-520, if:

- (1) the claimant is a resident of this state or doing business or authorized to do business in this state; or
- (2) the claim is to establish or enforce a liability arising under law of this state other than the Nebraska Uniform Protected Series Act or from an act or omission in this state.

Source: Laws 2018, LB1121, § 22; Laws 2019, LB78, § 10.
Operative date January 1, 2021.

21-522 Remedies of judgment creditor of associated member or protected-series transferee.

Section 21-142 applies to a judgment creditor of:

- (1) an associated member or protected-series transferee of a protected series; or
- (2) a series limited liability company, to the extent the company owns a protected-series transferable interest of a protected series.

Source: Laws 2018, LB1121, § 23; Laws 2019, LB78, § 11.
Operative date January 1, 2021.

21-523 Enforcement against nonassociated asset.

(a) In this section:

- (1) Enforcement date means 12:01 a.m. on the date on which a claimant first serves process on a series limited liability company or protected series in an

action seeking to enforce under this section a claim against an asset of the company or protected series by attachment, levy, or the like.

(2) Subject to subsection (b) of section 21-534, incurrence date means the date on which a series limited liability company or protected series incurred the liability giving rise to a claim that a claimant seeks to enforce under this section.

(b) If a claim against a series limited liability company or a protected series of the company has been reduced to judgment, in addition to any other remedy provided by law or equity, the judgment may be enforced in accordance with the following rules:

(1) A judgment against the company may be enforced against an asset of a protected series of the company if the asset:

(A) was a nonassociated asset of the protected series on the incurrence date; or

(B) is a nonassociated asset of the protected series on the enforcement date.

(2) A judgment against a protected series may be enforced against an asset of the company if the asset:

(A) was a nonassociated asset of the company on the incurrence date; or

(B) is a nonassociated asset of the company on the enforcement date.

(3) A judgment against a protected series may be enforced against an asset of another protected series of the company if the asset:

(A) was a nonassociated asset of the other protected series on the incurrence date; or

(B) is a nonassociated asset of the other protected series on the enforcement date.

(c) In addition to any other remedy provided by law or equity, if a claim against a series limited liability company or a protected series has not been reduced to a judgment and law other than the Nebraska Uniform Protected Series Act permits a prejudgment remedy by attachment, levy, or the like, the court may apply subsection (b) of this section as a prejudgment remedy.

(d) In a proceeding under this section, the party asserting that an asset is or was an associated asset of a series limited liability company or a protected series of the company has the burden of proof on the issue.

(e) This section applies to an asset of a foreign series limited liability company or foreign protected series if:

(1) the asset is real or tangible property located in this state;

(2) the claimant is a resident of this state or doing business or authorized to do business in this state, or the claim under this section is to enforce a judgment, or to seek a prejudgment remedy, pertaining to a liability arising from law of this state other than the Nebraska Uniform Protected Series Act or an act or omission in this state; and

(3) the asset is not identified in the records of the foreign series limited liability company or foreign protected series in a manner comparable to the manner required by section 21-515.

Source: Laws 2018, LB1121, § 24; Laws 2019, LB78, § 12.
Operative date January 1, 2021.

(e) DISSOLUTION AND WINDING UP OF PROTECTED SERIES

21-524 Events causing dissolution of protected series.

A protected series of a series limited liability company is dissolved, and its activities and affairs must be wound up, only on the:

- (1) dissolution of the company;
- (2) occurrence of an event or circumstance the operating agreement states causes dissolution of the protected series;
- (3) affirmative vote or consent of all members; or
- (4) entry by the court of an order dissolving the protected series on application by an associated member or protected-series manager of the protected series:
 - (A) in accordance with section 21-508; and
 - (B) to the same extent, in the same manner, and on the same grounds the court would enter an order dissolving a limited liability company on application by a member or manager of the company; or
- (5) entry by the court of an order dissolving the protected series on application by the company or a member of the company on the ground that the conduct of all or substantially all the activities and affairs of the protected series is illegal.

Source: Laws 2018, LB1121, § 25.

Operative date January 1, 2021.

21-525 Winding up dissolved protected series.

(a) Subject to subsections (b) and (c) of this section and in accordance with section 21-508:

- (1) a dissolved protected series shall wind up its activities and affairs in the same manner that a limited liability company winds up its activities and affairs under sections 21-147 to 21-154, subject to the same requirements and conditions and with the same effects; and
- (2) judicial supervision or another judicial remedy is available in the winding up of the protected series to the same extent, in the same manner, under the same conditions, and with the same effects that apply under subsection (e) of section 21-148.

(b) When a protected series of a series limited liability company dissolves, the company shall deliver to the Secretary of State for filing a statement of protected-series dissolution stating the name of the company and the protected series and that the protected series is dissolved. The filing of the statement by the Secretary of State has the same effect as the filing by the Secretary of State of a statement of dissolution under subdivision (d)(2)(A) of section 21-103.

(c) When a protected series of a series limited liability company has completed winding up, the company may deliver to the Secretary of State for filing a statement of designation cancellation stating the name of the company and the protected series and that the protected series is terminated. The filing of the statement by the Secretary of State has the same effect as the filing by the Secretary of State of a statement of termination under subdivision (d)(2)(B) of section 21-103.

(d) A series limited liability company has not completed its winding up until each of the protected series of the company has completed its winding up.

Source: Laws 2018, LB1121, § 26; Laws 2019, LB78, § 13.
Operative date January 1, 2021.

21-526 Effect of reinstatement of series limited liability company or revocation of voluntary dissolution.

If a series limited liability company that has been administratively dissolved is reinstated, or a series limited liability company that voluntarily dissolved rescinds its dissolution:

- (1) each protected series of the company ceases winding up; and
- (2) section 21-152 applies to each protected series of the company in accordance with section 21-508.

Source: Laws 2018, LB1121, § 27; Laws 2019, LB78, § 14.
Operative date January 1, 2021.

(f) ENTITY TRANSACTIONS RESTRICTED

21-527 Definitions.

In sections 21-527 to 21-534:

- (1) After a merger or after the merger means when a merger under section 21-530 becomes effective and afterwards.
- (2) Before a merger or before the merger means before a merger under section 21-530 becomes effective.
- (3) Continuing protected series means a protected series of a surviving company which continues in uninterrupted existence after a merger under section 21-530.
- (4) Merging company means a limited liability company that is party to a merger under section 21-530.
- (5) Nonsurviving company means a merging company that does not continue in existence after a merger under section 21-530.
- (6) Relocated protected series means a protected series of a nonsurviving company which, after a merger under section 21-530, continues in uninterrupted existence as a protected series of the surviving company.
- (7) Surviving company means a merging company that continues in existence after a merger under section 21-530.

Source: Laws 2018, LB1121, § 28.
Operative date January 1, 2021.

21-528 Protected series; prohibited acts.

A protected series may not:

- (1) be an acquiring, acquired, converting, converted, merging, or surviving organization;
- (2) participate in a domestication; or

(3) be a party to or be formed, organized, established, or created in a transaction substantially like a merger, interest exchange, conversion, or domestication.

Source: Laws 2018, LB1121, § 29; Laws 2019, LB78, § 15.

Operative date January 1, 2021.

21-529 Series limited liability company; prohibited acts.

A series limited liability company may not be:

(1) an acquiring, acquired, converting, converted, domesticating, or domesticated organization; or

(2) except as otherwise provided in section 21-530, a party to or the surviving company of a merger.

Source: Laws 2018, LB1121, § 30; Laws 2019, LB78, § 16.

Operative date January 1, 2021.

21-530 Merger authorized; parties restricted.

A series limited liability company may be party to a merger in accordance with sections 21-171 to 21-174, this section, and sections 21-531 to 21-534 only if:

(1) each other party to the merger is a limited liability company; and

(2) the surviving company is not created in the merger.

Source: Laws 2018, LB1121, § 31.

Operative date January 1, 2021.

21-531 Plan of merger.

In a merger under section 21-530, the plan of merger must:

(1) comply with sections 21-171 to 21-174; and

(2) state in a record:

(A) for any protected series of a nonsurviving company, whether after the merger the protected series will be a relocated protected series or be dissolved, wound up, and terminated;

(B) for any protected series of the surviving company which exists before the merger, whether after the merger the protected series will be a continuing protected series or be dissolved, wound up, and terminated;

(C) for each relocated protected series or continuing protected series:

(i) the name of any person that becomes an associated member or protected-series transferee of the protected series after the merger, any consideration to be paid by, on behalf of, or in respect of the person, the name of the payor, and the name of the payee;

(ii) the name of any person whose rights or obligations in the person's capacity as an associated member or protected-series transferee will change after the merger;

(iii) any consideration to be paid to a person who before the merger was an associated member or protected-series transferee of the protected series and the name of the payor; and

(iv) if after the merger the protected series will be a relocated protected series, its new name;

(D) for any protected series to be established by the surviving company as a result of the merger:

- (i) the name of the protected series;
- (ii) any protected-series transferable interest to be owned by the surviving company when the protected series is established; and
- (iii) the name of and any protected-series transferable interest owned by any person that will be an associated member of the protected series when the protected series is established; and

(E) for any person that is an associated member of a relocated protected series and will remain a member after the merger, any amendment to the operating agreement of the surviving company which:

- (1) is or is proposed to be in a record; and
- (2) is necessary or appropriate to state the rights and obligations of the person as a member of the surviving company.

Source: Laws 2018, LB1121, § 32.

Operative date January 1, 2021.

21-532 Articles of merger.

In a merger under section 21-530, the articles of merger must:

- (1) comply with sections 21-171 to 21-174; and
- (2) include as an attachment the following records, each to become effective when the merger becomes effective:

(A) for a protected series of a merging company being terminated as a result of the merger, a statement of termination signed by the company;

(B) for a protected series of a nonsurviving company which after the merger will be a relocated protected series:

(i) a statement of relocation signed by the nonsurviving company which contains the name of the company and the name of the protected series before and after the merger; and

(ii) a statement of protected-series designation signed by the surviving company; and

(C) for a protected series being established by the surviving company as a result of the merger, a statement of designation signed by the company.

Source: Laws 2018, LB1121, § 33; Laws 2019, LB78, § 17.

Operative date January 1, 2021.

21-533 Effect of merger.

When a merger under section 21-530 becomes effective, in addition to the effects stated in sections 21-171 to 21-174:

(1) as provided in the plan of merger, each protected series of each merging company which was established before the merger:

(A) is a relocated protected series or continuing protected series; or

(B) is dissolved, wound up, and terminated;

(2) any protected series to be established as a result of the merger is established;

(3) any relocated protected series or continuing protected series is the same person without interruption as it was before the merger;

(4) all property of a relocated protected series or continuing protected series continues to be vested in the protected series without transfer, reversion, or impairment;

(5) all debts, obligations, and other liabilities of a relocated protected series or continuing protected series continue as debts, obligations, and other liabilities of the protected series;

(6) except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of a relocated protected series or continuing protected series remain in the protected series;

(7) the new name of a relocated protected series may be substituted for the former name of the protected series in any pending action or proceeding;

(8) if provided in the plan of merger:

(A) a person becomes an associated member or protected-series transferee of a relocated protected series or continuing protected series;

(B) a person becomes an associated member of a protected series established by the surviving company as a result of the merger;

(C) any change in the rights or obligations of a person in the person's capacity as an associated member or protected-series transferee of a relocated protected series or continuing protected series take effect; and

(D) any consideration to be paid to a person that before the merger was an associated member or protected-series transferee of a relocated protected series or continuing protected series is due; and

(9) any person that is a member of a relocated protected series becomes a member of the surviving company, if not already a member.

Source: Laws 2018, LB1121, § 34.

Operative date January 1, 2021.

21-534 Application of section 21-523 after merger.

(a) A creditor's right that existed under section 21-523 immediately before a merger under section 21-530 may be enforced after the merger in accordance with the following rules:

(1) A creditor's right that existed immediately before the merger against the surviving company, a continuing protected series, or a relocated protected series continues without change after the merger.

(2) A creditor's right that existed immediately before the merger against a nonsurviving company:

(A) may be asserted against an asset of the nonsurviving company which vested in the surviving company as a result of the merger; and

(B) does not otherwise change.

(3) Subject to subsection (b) of this section, the following rules apply:

(A) In addition to the remedy stated in subdivision (a)(1) of this section, a creditor with a right under section 21-523 which existed immediately before the merger against a nonsurviving company or a relocated protected series may assert the right against:

(i) an asset of the surviving company, other than an asset of the nonsurviving company which vested in the surviving company as a result of the merger;

(ii) an asset of a continuing protected series; or

(iii) an asset of a protected series established by the surviving company as a result of the merger;

(iv) if the creditor's right was against an asset of the nonsurviving company, an asset of a relocated series; or

(v) if the creditor's right was against an asset of a relocated protected series, an asset of another relocated protected series.

(B) In addition to the remedy stated in subdivision (a)(2) of this section, a creditor with a right that existed immediately before the merger against the surviving company or a continuing protected series may assert the right against:

(i) an asset of a relocated protected series; or

(ii) an asset of a nonsurviving company which vested in the surviving company as a result of the merger.

(b) For the purposes of subdivision (a)(3) of this section and subdivisions (b)(1)(A), (b)(2)(A), and (b)(3)(A) of section 21-523, the incurrence date is deemed to be the date on which the merger becomes effective.

(c) A merger under section 21-530 does not affect the manner in which section 21-523 applies to a liability incurred after the merger.

Source: Laws 2018, LB1121, § 35; Laws 2019, LB78, § 18.
Operative date January 1, 2021.

(g) FOREIGN PROTECTED SERIES

21-535 Governing law.

The law of the jurisdiction of formation of a foreign series limited liability company governs:

(1) the internal affairs of a foreign protected series of the company, including:

(A) relations among any associated members of the foreign protected series;

(B) relations between the foreign protected series and:

(i) any associated member;

(ii) the protected-series manager; or

(iii) any protected-series transferee;

(C) relations between any associated member and:

(i) the protected-series manager; or

(ii) any protected-series transferee;

(D) the rights and duties of a protected-series manager;

(E) governance decisions affecting the activities and affairs of the foreign protected series and the conduct of those activities and affairs; and

(F) procedures and conditions for becoming an associated member or protected-series transferee;

(2) relations between the foreign protected series and:

(A) the company;

- (B) another foreign protected series of the company;
 - (C) a member of the company which is not an associated member of the foreign protected series;
 - (D) a foreign protected-series manager that is not a protected-series manager of the protected series;
 - (E) a foreign protected-series transferee that is not a foreign protected-series transferee of the protected series; and
 - (F) a transferee of a transferable interest of the company;
- (3) except as otherwise provided in sections 21-521 and 21-523, the liability of a person for a debt, obligation, or other liability of a foreign protected series of a foreign series limited liability company if the debt, obligation, or liability is asserted solely by reason of the person being or acting as:
- (A) an associated member, protected-series transferee, or protected-series manager of the foreign protected series;
 - (B) a member of the company which is not an associated member of the foreign protected series;
 - (C) a protected-series manager of another foreign protected series of the company;
 - (D) a protected-series transferee of another foreign protected series of the company;
 - (E) a manager of the company; or
 - (F) a transferee of a transferable interest of the company; and
- (4) except as otherwise provided in sections 21-521 and 21-523:
- (A) the liability of the foreign series limited liability company for a debt, obligation, or other liability of a foreign protected series of the company if the debt, obligation, or liability is asserted solely by reason of the foreign protected series being a foreign protected series of the company or the company:
 - (i) being or acting as a foreign protected-series manager of the foreign protected series;
 - (ii) having the foreign protected series manage the company; or
 - (iii) owning a protected-series transferable interest of the foreign protected series; and
 - (B) the liability of a foreign protected series for a debt, obligation, or other liability of the company or another foreign protected series of the company if the debt, obligation, or liability is asserted solely by reason of the foreign protected series:
 - (i) being a foreign protected series of the company or having the company or another foreign protected series of the company be or act as foreign protected-series manager of the foreign protected series; or
 - (ii) managing the company or being or acting as a foreign protected-series manager of another foreign protected series of the company.

Source: Laws 2018, LB1121, § 36.

Operative date January 1, 2021.

21-536 No attribution of activities constituting doing business or for establishing jurisdiction.

In determining whether a foreign series limited liability company or foreign protected series of the company does business in this state or is subject to the personal jurisdiction of the courts of this state:

(1) the activities and affairs of the company are not attributable to a foreign protected series of the company solely by reason of the foreign protected series being a foreign protected series of the company; and

(2) the activities and affairs of a foreign protected series are not attributable to the company or another foreign protected series of the company solely by reason of the foreign protected series being a foreign protected series of the company.

Source: Laws 2018, LB1121, § 37.

Operative date January 1, 2021.

21-537 Authorization of foreign protected series.

(a) Except as otherwise provided in this section and subject to sections 21-521 and 21-523, the law of this state governing the authorization of a foreign limited liability company to do business in this state, including the consequences of not complying with that law, applies to a foreign protected series of a foreign series limited liability company as if the foreign protected series were a foreign limited liability company formed separately from the foreign series limited liability company and distinct from the foreign series limited liability company and any other foreign protected series of the foreign series limited liability company.

(b) An application by a foreign protected series of a foreign series limited liability company for a certificate of authority to do business in this state must include:

(1) the name and jurisdiction of formation of the foreign series limited liability company along with a certificate of existence or equivalent for the foreign protected series issued in its jurisdiction of formation, except that if the jurisdiction of formation of the foreign series limited liability company does not provide for issuance of a certificate of existence or equivalent for a foreign protected series, the application must include a certificate of existence or equivalent for the foreign series limited liability company and in that case the foreign protected series is deemed to be in existence as long as the foreign series limited liability company is in existence or good standing in its jurisdiction of formation; and

(2) if the company has other foreign protected series, the name and street and mailing address of an individual who knows the name and street and mailing address of:

(A) each other foreign protected series of the foreign series limited liability company; and

(B) the foreign protected-series manager of and agent for service of process for each other foreign protected series of the foreign series limited liability company.

(c) The name of a foreign protected series applying for a certificate of authority to do business in this state must comply with section 21-108 and subsection (b) of section 21-510 and may do so using subsection (d) of section 21-108, if the fictitious name complies with section 21-108 and subsection (b) of section 21-510.

(d) A foreign protected series that has been issued a certificate of authority to do business in this state pursuant to this section shall file an amendment to its application if there is any change in the information required by subsection (b) of this section.

Source: Laws 2018, LB1121, § 38; Laws 2019, LB78, § 19.
Operative date January 1, 2021.

21-538 Disclosure required when foreign series limited liability company or foreign protected series party to proceeding.

(a) Not later than thirty days after becoming a party to a proceeding before a civil, administrative, or other adjudicative tribunal of or located in this state or a tribunal of the United States located in this state:

(1) a foreign series limited liability company shall disclose to each other party the name and street and mailing address of:

(A) each foreign protected series of the company; and

(B) each foreign protected-series manager of and a registered agent for service of process for each foreign protected series of the company; and

(2) a foreign protected series of a foreign series limited liability company shall disclose to each other party the name and street and mailing address of:

(A) the company and each manager of the company and an agent for service of process for the company; and

(B) any other foreign protected series of the company and each foreign protected-series manager of and an agent for service of process for the other foreign protected series.

(b) If a foreign series limited liability company or foreign protected series challenges the personal jurisdiction of the tribunal, the requirement that the foreign company or foreign protected series make disclosure under subsection (a) of this section is tolled until the tribunal determines whether it has personal jurisdiction.

(c) If a foreign series limited liability company or foreign protected series does not comply with subsection (a) of this section, a party to the proceeding may:

(1) request the tribunal to treat the noncompliance as a failure to comply with the tribunal's discovery rules; or

(2) bring a separate proceeding in the court to enforce subsection (a) of this section.

Source: Laws 2018, LB1121, § 39.
Operative date January 1, 2021.

(h) MISCELLANEOUS PROVISIONS

21-539 Uniformity of application and construction.

In applying and construing the Nebraska Uniform Protected Series Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the Uniform Protected Series Act.

Source: Laws 2018, LB1121, § 40; Laws 2019, LB78, § 20.
Operative date January 1, 2021.

21-540 Relation to Electronic Signatures in Global and National Commerce Act.

The Nebraska Uniform Protected Series Act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Source: Laws 2018, LB1121, § 41.
Operative date January 1, 2021.

21-541 Repealed. Laws 2019, LB78, § 24.
Operative date January 1, 2021.**21-542 Savings clause.**

The Nebraska Uniform Protected Series Act does not affect an action commenced, proceeding brought, or right accrued before January 1, 2021.

Source: Laws 2018, LB1121, § 43.
Operative date January 1, 2021.

ARTICLE 6**CHARITABLE AND FRATERNAL SOCIETIES**

Section

21-610. Societies declared to be corporations; power to act as administrator, executor, guardian, or trustee.

21-610 Societies declared to be corporations; power to act as administrator, executor, guardian, or trustee.

When any such organization has established in this state an institution for the care of children or persons who are incapacitated in any manner and such institution has been incorporated under the laws of Nebraska, such corporation shall have power to act either by itself or jointly with any natural person or persons (1) as administrator of the estate of any deceased person whose domicile was within the county in which the corporation is located or whose domicile was outside the State of Nebraska, (2) as executor under a last will and testament or as guardian of the property of any infant, person with an intellectual disability, person with a mental disorder, or person under other disability, or (3) 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.

Source: Laws 1917, c. 11, § 1, p. 70; Laws 1919, c. 156, § 1, p. 353; Laws 1921, c. 147, § 1, p. 624; Laws 1921, c. 174, § 1, p. 672; C.S.1922, § 504; Laws 1923, c. 34, § 1, p. 146; Laws 1925, c. 148, § 1, p. 386; Laws 1929, c. 57, § 1, p. 225; C.S.1929, § 24-607; Laws 1935, c. 46, § 1, p. 171; Laws 1937, c. 52, § 1, p. 218; C.S.Supp.,1941, § 24-607; R.S.1943, § 21-610; Laws 1986, LB 1177, § 3; Laws 2013, LB23, § 1.

ARTICLE 13

COOPERATIVE COMPANIES

(a) GENERAL PROVISIONS

Section

21-1301. Cooperative corporation; formation; general purposes and powers; exceptions; action by cooperative corporation; vote required.

(a) GENERAL PROVISIONS

21-1301 Cooperative corporation; formation; general purposes and powers; exceptions; action by cooperative corporation; vote required.

Any number of persons, not less than ten, or one or more cooperative companies, may form and organize a cooperative corporation for the transaction of any lawful business by the adoption of articles of incorporation in the same manner and with like powers and duties as is required of other corporations except as provided in sections 21-1301 to 21-1306. Nothing in sections 21-1301 and 21-1303 shall be deemed to apply to electrical cooperatives or electric member associations. If the Nebraska Model Business Corporation Act requires an affirmative vote of a specified percentage of stockholders before action can be taken by a corporation, such percentage for a cooperative corporation shall be of the votes cast on the matter at the stockholders' meeting at which the same shall be voted upon.

Source: Laws 1911, c. 32, § 2, p. 196; R.S.1913, § 734; Laws 1919, c. 197, § 3, p. 879; Laws 1921, c. 28, § 1, p. 161; C.S.1922, § 642; Laws 1925, c. 79, § 1, p. 243; C.S.1929, § 24-1301; R.S.1943, § 21-1301; Laws 1963, c. 102, § 1, p. 422; Laws 1975, LB 156, § 1; Laws 1995, LB 109, § 203; Laws 2014, LB749, § 262.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.
Transactions exempt from Securities Act of Nebraska, see section 8-1111.

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.
- 21-1725.01. New credit union; branch credit union; application; procedure; hearing.
- 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.

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.

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.

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.

21-1725 Repealed. Laws 2017, LB375, § 10.

21-1725.01 New credit union; branch credit union; application; procedure; hearing.

(1) Upon receiving an application to establish a new credit union, a public hearing shall be held on each application. Notice of the filing of the application shall be published by the department for three weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the credit union. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after filing the application unless the applicant agrees to a later date. Notice of the filing of the application shall be sent by the department to all financial institutions located in the county where the applicant proposes to operate.

(2) When application is made to establish a branch of a credit union, the director shall hold a hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant credit union warrants a hearing. If the director determines that the condition of the credit union 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 would be located. If the director receives any substantive objection to the proposed credit union 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 would be located. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after the filing of the application unless the applicant agrees to a later date.

(3) The director may, in his or her discretion, hold a public hearing on amendments to a credit union's articles of association or bylaws which are brought before the department.

(4) 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 2002, LB 957, § 17; Laws 2003, LB 217, § 30; Laws 2005, LB 533, § 30; Laws 2010, LB890, § 13; Laws 2016, LB751, § 7.

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.

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.

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.

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.

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.

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, 2020, 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; Laws 2018, LB812, § 9; Laws 2019, LB258, § 13; Laws 2020, LB909, § 21.

Operative date July 25, 2020.

21-17,116 Repealed. Laws 2017, LB375, § 10.

ARTICLE 19

NEBRASKA NONPROFIT CORPORATION ACT

(a) GENERAL PROVISIONS

Section
21-1905.

Fees.

(d) NAMES

21-1931.

Corporate name.

§ 21-1905 CORPORATIONS AND OTHER COMPANIES

Section

21-1933. Registered name.

(m) DISSOLUTION

21-19,139. Reinstatement following administrative dissolution.

(n) FOREIGN CORPORATIONS

21-19,151. Foreign corporation; corporate name.

21-19,159. Foreign corporation; revoked certificate; application for reinstatement.

21-19,163. Foreign corporation; domestication; procedure; effect.

(o) RECORDS AND REPORTS

21-19,172. Biennial report; contents.

(a) GENERAL PROVISIONS

21-1905 Fees.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered for filing:

(1)(i) Articles of incorporation or (ii) documents relating to domestication:

(A) If the filing is submitted in writing, the fee shall be \$30; and

(B) If the filing is submitted electronically pursuant to section 84-511, the fee shall be \$25;

(2) Agent's statement of change of registered office for each affected corporation . . . \$25.00 (not to exceed a total of \$1,000)

(3) Agent's statement of resignation . . . no fee

(4) Certificate of administrative dissolution . . . no fee

(5) Application for reinstatement more than five years after the effective date of an administrative dissolution or administrative revocation . . . \$500.00

(6) Certificate of reinstatement . . . no fee

(7) Certificate of judicial dissolution . . . no fee

(8) Certificate of authority:

(i) If the filing is submitted in writing, the fee shall be \$30; and

(ii) If the filing is submitted electronically pursuant to section 84-511, the fee shall be \$25;

(9) Certificate of revocation of authority to transact business . . . no fee

(10) Application for certificate of good standing . . . \$10.00

(11) Any other document required or permitted to be filed by the Nebraska Nonprofit Corporation Act:

(i) If the filing is submitted in writing, the fee shall be \$30; and

(ii) If the filing is submitted electronically pursuant to section 84-511, the fee shall be \$25.

(b) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(1) \$1.00 per page; and

(2) \$10.00 for the certificate.

(c) All fees set forth in this section shall be collected by the Secretary of State and remitted to the State Treasurer and credited sixty percent to the General Fund and forty percent to the Secretary of State Cash Fund.

Source: Laws 1996, LB 681, § 5; Laws 2008, LB907, § 1; Laws 2015, LB279, § 9; Laws 2018, LB749, § 1; Laws 2020, LB910, § 7.
Operative date July 1, 2021.

(d) NAMES

21-1931 Corporate name.

(a) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 21-1927 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name shall not be the same as or deceptively similar to, upon the records of the Secretary of State, any of the names referenced in subdivisions (b)(1) through (5) of this section:

(1) The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(2) A corporate name reserved or registered under section 21-231, 21-232, 21-1932, or 21-1933;

(3) The fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable;

(4) A trade name registered in this state pursuant to sections 87-208 to 87-219.01; and

(5) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(c) A corporation may apply to the Secretary of State for authorization to use a name that is deceptively similar to, upon the Secretary of State's records, one or more of the names described in subsection (b) of this section. The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation or business entity consents to the use in writing; or

(2) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to do business in this state and the proposed user corporation:

(1) Has merged with the other corporation or business entity;

(2) Has been formed by reorganization of the other corporation or business entity; or

(3) Has acquired all or substantially all of the assets, including the name, of the other corporation or business entity.

(e) The Nebraska Nonprofit Corporation Act does not control the use of fictitious names.

Source: Laws 1996, LB 681, § 31; Laws 1997, LB 44, § 2; Laws 1997, LB 453, § 1; Laws 2003, LB 464, § 1; Laws 2011, LB462, § 1; Laws 2014, LB749, § 263.

21-1933 Registered name.

(a) A foreign corporation may register its corporate name, or its corporate name with any change required by section 21-19,151, if the name is not the same as or deceptively similar to, upon the records of the Secretary of State:

(1) The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(2) A corporate name reserved under section 21-231 or 21-1932 or registered under this section; and

(3) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(b) A foreign corporation registers its corporate name, or its corporate name with any change required by section 21-19,151, by delivering to the Secretary of State an application:

(1) Setting forth its corporate name, or its corporate name with any change required by section 21-19,151, the state or country and date of its incorporation, and a brief description of the nature of the activities in which it is engaged; and

(2) Accompanied by a certificate of existence (or a document of similar import) from the state or country of incorporation. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is filed in this state.

(c) The corporate name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (b) of this section, between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation or other business entity thereafter incorporated under the Nebraska Nonprofit Corporation Act or authorized to transact business in this state or by another foreign corporation or business entity thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation or business entity qualifies or consents to the qualification of another foreign corporation or business entity under the registered name.

Source: Laws 1996, LB 681, § 33; Laws 1997, LB 44, § 3; Laws 2003, LB 464, § 2; Laws 2014, LB749, § 264.

(m) DISSOLUTION

21-19,139 Reinstatement following administrative dissolution.

(a) A corporation administratively dissolved under section 21-19,138 may apply to the Secretary of State for reinstatement within five years after the effective date of its administrative dissolution. The application must:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution;
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and
- (3) State that the corporation's name satisfies the requirements of section 21-1931.

(b) If the Secretary of State determines that the application for reinstatement contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-1937.

(c) A corporation that has been administratively dissolved under section 21-19,138 for more than five years may apply to the Secretary of State for late reinstatement. The application, along with the fee set forth in section 21-1905, must:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution;
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated;
- (3) State that the corporation's name satisfies the requirements of section 21-1931;
- (4) State that a legitimate reason exists for reinstatement and what such legitimate reason is; and
- (5) State that such reinstatement does not constitute fraud on the public.

(d) If the Secretary of State determines that the application for late reinstatement contains the information required by subsection (c) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of late reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-1937.

(e) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

Source: Laws 1996, LB 681, § 139; Laws 2012, LB854, § 4; Laws 2015, LB279, § 10.

(n) FOREIGN CORPORATIONS

21-19,151 Foreign corporation; corporate name.

(a) If the corporate name of a foreign corporation does not satisfy the requirements of section 21-1931, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d) of this section, the corporate name (including a fictitious name) of a foreign corporation shall not be the same as or deceptively similar to, upon the records of the Secretary of State, any of the names referenced in subdivisions (b)(1) through (5) of this section:

(1) The corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state;

(2) A corporate name reserved or registered under section 21-231, 21-232, 21-1932, or 21-1933;

(3) The fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state;

(4) A trade name registered in this state pursuant to sections 87-208 to 87-219.01; and

(5) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation or business entity (incorporated or authorized to transact business in this state) that is deceptively similar to, upon the records of the Secretary of State, the name applied for. The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation or business entity consents in writing to the use; or

(2) The applying corporation delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing its right to use the name applied for in this state.

(d) A foreign corporation may use in this state the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to transact business in this state and the foreign corporation:

(1) Has merged with the other corporation or business entity;

(2) Has been formed by a reorganization of the other corporation or business entity; or

(3) Has acquired all or substantially all of the assets, including the name, of the other corporation or business entity.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 21-1931, it shall not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 21-1931 and obtains an amended certificate of authority under section 21-19,149.

Source: Laws 1996, LB 681, § 151; Laws 1997, LB 44, § 4; Laws 1997, LB 453, § 2; Laws 2003, LB 464, § 3; Laws 2011, LB462, § 2; Laws 2014, LB749, § 265.

21-19,159 Foreign corporation; revoked certificate; application for reinstatement.

(a) A foreign corporation the certificate of authority of which has been revoked under section 21-19,158 may apply to the Secretary of State for

reinstatement within five years after the effective date of the revocation. The application must:

(1) Recite the name of the foreign corporation and the effective date of the revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) State that the foreign corporation's name satisfies the requirements of section 21-19,151.

(b) If the Secretary of State determines that the application for reinstatement contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of revocation and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-19,155.

(c) A foreign corporation, the certificate of authority of which has been revoked under section 21-19,158 for more than five years, may apply to the Secretary of State for late reinstatement. The application, along with the fee set forth in section 21-1905, must:

(1) Recite the name of the foreign corporation and the effective date of the revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated;

(3) State that the foreign corporation's name satisfies the requirements of section 21-19,151;

(4) State that a legitimate reason exists for reinstatement and what such legitimate reason is; and

(5) State that such reinstatement does not constitute fraud on the public.

(d) If the Secretary of State determines that the application for late reinstatement contains the information required by subsection (c) of this section and that the information is correct, the Secretary of State shall cancel the certificate of revocation and prepare a certificate of late reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-19,155.

(e) When reinstatement is effective, it relates back to and takes effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its activities as if the revocation had never occurred.

Source: Laws 1996, LB 681, § 159; Laws 2012, LB854, § 5; Laws 2015, LB279, § 11.

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.

(o) RECORDS AND REPORTS

21-19,172 Biennial report; contents.

(a) Commencing in 1999 and each odd-numbered year thereafter, each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the Secretary of State a biennial report on a form prescribed and furnished by the Secretary of State that sets forth:

(1) The name of the corporation and the state or country under whose law it is incorporated;

(2) The street address of its registered office and the name of its current registered agent at the office in this state. A post office box number may be provided in addition to the street address;

(3) The street address of its principal office;

(4) The names and business or residence addresses of its directors and principal officers;

(5) A brief description of the nature of its activities;

(6) Whether or not it has members;

(7) If it is a domestic corporation, whether it is a public benefit, mutual benefit, or religious corporation; and

(8) If it is a foreign corporation, whether it would be a public benefit, mutual benefit, or religious corporation had it been incorporated in this state.

(b) The information in the biennial report must be current on the date the biennial report is executed on behalf of the corporation.

(c) The first biennial report must be delivered to the Secretary of State between January 1 and April 1 of the odd-numbered year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent biennial reports must be delivered to the Secretary of State between January 1 and April 1 of the following odd-numbered years. For purposes of the Nebraska Nonprofit Corporation Act, the biennial report is due on April 1 of the odd-numbered year in which it must be delivered to the Secretary of State as required by this section.

(d) If a biennial report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty days after the effective date of notice, it is deemed to be timely filed.

(e) Upon the delivery of the biennial report as provided in this section, the Secretary of State shall charge and collect a fee as prescribed in section 21-1905. For purposes of the Nebraska Nonprofit Corporation Act, the fee is

due on April 1 of the odd-numbered year in which the biennial report must be delivered to the Secretary of State as required by this section.

(f) Biennial reports shall be filed in 1997 pursuant to sections 21-1981 and 21-1982 (Reissue 1991) as if such sections had not been repealed by Laws 1996, LB 681. Fees, including penalties, due or delinquent prior to 1999 shall be paid pursuant to section 21-1982 (Reissue 1991) as if such section had not been repealed by Laws 1996, LB 681.

(g) A correction or an amendment to the biennial report may be delivered to the Secretary of State for filing at any time.

Source: Laws 1996, LB 681, § 172; Laws 2008, LB379, § 14; Laws 2014, LB774, § 3.

ARTICLE 20

BUSINESS CORPORATION ACT

(a) GENERAL PROVISIONS

Section

21-2001.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2002.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2003.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2004.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2005.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws 2015, LB279, § 19.
21-2006.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2007.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2008.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2009.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2010.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2011.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2012.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2013.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2014.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2015.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2016.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(b) INCORPORATION

21-2017.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2018.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2019.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2020.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2021.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2022.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2023.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(c) PURPOSES AND POWERS

21-2024.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2025.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2026.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2027.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(d) NAME

21-2028.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2029.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2030.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(e) OFFICE AND AGENT

21-2031.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2032.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2033.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

BUSINESS CORPORATION ACT

Section

21-2089.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2090.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2091.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2092.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2093.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2094.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2095.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2096.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2097.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2098.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2099.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,100.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,101.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,102.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,103.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,104.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,105.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,106.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,107.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,108.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,109.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,110.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,111.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,112.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,113.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,114.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,115.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(i) AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

21-20,116.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,117.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,118.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,119.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,120.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,121.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,122.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,123.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,124.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,125.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,126.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,127.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(j) MERGER AND SHARE EXCHANGE

21-20,128.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,129.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,130.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,131.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,132.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,133.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,134.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(k) SALE OF ASSETS

21-20,135.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,135.01.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,136.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(l) DISSENTERS' RIGHTS

21-20,137.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,138.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,139.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,140.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,141.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

CORPORATIONS AND OTHER COMPANIES

Section

21-20,142. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,143. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,144. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,145. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,146. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,147. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,148. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,149. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,150. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(m) DISSOLUTION

21-20,151. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,152. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,153. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,154. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,155. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,156. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,157. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,158. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,159. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,160. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws
2015, LB279, § 19.
21-20,161. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,162. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,163. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,164. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,165. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,166. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,167. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(n) FOREIGN CORPORATIONS

21-20,168. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,169. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,170. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,171. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,172. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,173. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,174. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,175. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,176. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,177. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws
2015, LB294, § 25.
21-20,178. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,179. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,180. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,180.01. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws
2015, LB279, § 19.
21-20,181. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,181.01. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,181.02. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,181.03. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(o) RECORDS AND REPORTS

21-20,182. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,183. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,184. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,185. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,186. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,187. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,188. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

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(p) PUBLICATION

21-20,189. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(q) TRANSITION PROVISIONS

21-20,190. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,191. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,192. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,193. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(r) CONVERSION

21-20,194. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,195. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,196. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,197. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(a) GENERAL PROVISIONS

21-2001 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2002 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2003 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2004 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2005 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws 2015, LB279, § 19.

21-2006 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2007 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2008 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2009 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2010 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2011 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2012 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2013 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2014 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2015 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2016 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(b) INCORPORATION

21-2017 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2018 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2019 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2020 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2021 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2022 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2023 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(c) PURPOSES AND POWERS

21-2024 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2025 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2026 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2027 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(d) NAME

21-2028 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2029 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2030 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(e) OFFICE AND AGENT

21-2031 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2032 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2033 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2034 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(f) SHARES AND DISTRIBUTIONS

21-2035 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2036 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2037 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

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21-2039 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

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21-2042 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

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21-2044 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2045 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2046 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2047 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2048 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2049 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2050 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(g) SHAREHOLDERS

21-2051 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2052 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2053 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2054 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2055 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2056 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2057 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2058 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2059 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2060 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2061 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2062 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2063 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2064 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2065 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2066 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2067 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2068 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2069 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2070 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2071 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2072 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2073 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2074 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2075 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2076 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2077 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(h) DIRECTORS AND OFFICERS

21-2078 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2079 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2080 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2081 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2082 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2083 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2084 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2085 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2086 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2087 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2088 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2089 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2090 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2091 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2092 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2093 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2094 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

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21-2097 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2098 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2099 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,100 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,101 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,102 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,103 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

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21-20,114 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,115 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(i) AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

21-20,116 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,117 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

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21-20,126 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,127 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(j) MERGER AND SHARE EXCHANGE

21-20,128 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,129 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,130 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,131 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,132 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,133 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,134 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(k) SALE OF ASSETS

21-20,135 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,135.01 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,136 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(l) DISSENTERS' RIGHTS

21-20,137 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,138 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,139 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,140 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

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21-20,145 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,146 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,147 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,148 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,149 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,150 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(m) DISSOLUTION

21-20,151 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,152 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,153 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,154 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,155 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,156 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,157 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,158 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,159 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,160 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10;
Laws 2015, LB279, § 19.

21-20,161 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,162 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,163 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,164 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,165 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,166 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,167 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(n) FOREIGN CORPORATIONS

21-20,168 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,169 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,170 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,171 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

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21-20,174 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,175 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,176 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,177 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10;
Laws 2015, LB294, § 25.

21-20,178 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,179 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,180 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,180.01 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10;
Laws 2015, LB279, § 19.

21-20,181 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,181.01 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,181.02 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,181.03 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(o) RECORDS AND REPORTS

21-20,182 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,183 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,184 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

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21-20,186 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,187 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,188 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(p) PUBLICATION

21-20,189 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(q) TRANSITION PROVISIONS

21-20,190 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,191 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,192 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,193 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(r) CONVERSION

21-20,194 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,195 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,196 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,197 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

ARTICLE 21

NEBRASKA BUSINESS DEVELOPMENT CORPORATION ACT

Section

21-2103. Business development corporations; incorporation.

21-2105. Powers.

21-2110. Shares; par value; authorized capital.

21-2115. Books and records.

21-2103 Business development corporations; incorporation.

One or more business development corporations may be incorporated in this state pursuant to the Nebraska Model Business Corporation Act not in conflict with or inconsistent with the provisions of the Nebraska Business Development Corporation Act.

Source: Laws 1967, c. 100, § 3, p. 303; Laws 1995, LB 109, § 204; Laws 2014, LB749, § 266.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-2105 Powers.

(1) A development corporation shall have all the powers granted to corporations organized under the Nebraska Model Business Corporation Act, except

that it shall not give security for any loan made to it by members unless all loans to it by members are secured ratably in proportion to unpaid balances due.

(2) The restriction in subsection (1) of this section shall in no manner be construed so as to prohibit a development corporation from making unsecured borrowings from the federal Small Business Administration.

Source: Laws 1967, c. 100, § 5, p. 304; Laws 1995, LB 109, § 205; Laws 2014, LB749, § 267.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-2110 Shares; par value; authorized capital.

(1) Each share of stock of the corporation shall have a par value of not less than ten dollars per share, as fixed by its articles of incorporation, and shall be issued only for lawful money of the United States. At least two hundred thousand dollars shall be paid into the treasury for capital stock before a corporation shall be authorized to transact any business other than such business as relates to its organization.

(2) Each shareholder shall be entitled to one vote, in person or by proxy, for each share of capital stock held, and each member shall be entitled to one vote, in person or by proxy, as such member.

(3) The rights given by the Nebraska Model Business Corporation Act to shareholders to attend meetings and to receive notice thereof and to exercise voting rights shall apply to members as well as to shareholders of a corporation created under the Nebraska Business Development Corporation Act. The voting rights of the members shall be the same as if they were a separate class of shareholders, and shareholders and members shall in all cases vote separately by classes. A quorum at a shareholders' meeting shall require the presence in person or by proxy of a majority of the holders of the voting rights of each class.

Source: Laws 1967, c. 100, § 10, p. 306; Laws 1995, LB 109, § 206; Laws 2014, LB749, § 268.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-2115 Books and records.

A corporation shall keep, in addition to the books and records required by the Nebraska Model Business Corporation Act, a record showing the names and addresses of all members of the corporation and the current status of loans made by each to the corporation. Members shall have the same rights with respect to all books and records as are given to shareholders in the Nebraska Model Business Corporation Act.

Source: Laws 1967, c. 100, § 15, p. 308; Laws 1995, LB 109, § 207; Laws 2014, LB749, § 269.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

ARTICLE 22

PROFESSIONAL CORPORATIONS

Section

- 21-2203. Powers, benefits, and privileges.
 21-2204. Articles of incorporation; certificate of registration; filing.
 21-2209. Provision of services in another jurisdiction; license required, when; foreign corporation; requirements.
 21-2212. Death or disqualification of shareholder; purchase or redemption of shares; death or disqualification of last remaining shareholder; powers of successor in interest.
 21-2216. Regulating board; certificate of registration; contents; filing; fee; display; electronic access; Secretary of State; duty; corporate suspension or dissolution; when.

21-2203 Powers, benefits, and privileges.

Except as the Nebraska Professional Corporation Act shall otherwise require, professional corporations shall enjoy all the powers, benefits, and privileges and be subject to all the duties, restrictions, and liabilities of a business corporation under the Nebraska Model Business Corporation Act and sections 21-301 to 21-325.02.

Source: Laws 1969, c. 121, § 3, p. 556; Laws 1995, LB 109, § 208; Laws 2014, LB749, § 270.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-2204 Articles of incorporation; certificate of registration; filing.

(1) One or more individuals residing within the State of Nebraska, each of whom is licensed or otherwise legally authorized to render the same professional service, may, by filing articles of incorporation and a certificate of registration with the Secretary of State, organize and become a shareholder in a professional corporation. The articles of incorporation shall conform to the requirements of section 21-220 and the certificate of registration shall conform to the requirements of sections 21-2216 to 21-2218.

(2) In addition to the requirements of subsection (1) of this section, the articles of incorporation shall contain a statement of the profession to be practiced by the corporation.

Source: Laws 1969, c. 121, § 4, p. 556; Laws 1995, LB 109, § 209; Laws 2004, LB 16, § 1; Laws 2014, LB749, § 271.

21-2209 Provision of services in another jurisdiction; license required, when; foreign corporation; requirements.

(1) A professional corporation may provide professional services in another jurisdiction if such corporation complies with all applicable laws of such jurisdiction regulating the rendering of professional services. Notwithstanding any other provision of the Nebraska Professional Corporation Act, no shareholder, director, officer, employee, or agent of a professional corporation shall be required to be licensed to render professional services in this state or to reside in this state if such shareholder, director, officer, employee, or agent does not render professional services in this state and is licensed in one or more states, territories of the United States, or the District of Columbia to

render a professional service described in the professional corporation's articles of incorporation.

(2) A foreign professional corporation shall not transact business in this state unless it renders one of the professional services specified in subdivision (3) of section 21-2202 and complies with the provisions of the act, including, without limitation, registration with the appropriate regulating board in this state as provided in sections 21-2216 to 21-2218. A foreign professional corporation shall not transact business in this state if the laws of the jurisdiction under which such foreign professional corporation is incorporated do not allow for a professional corporation incorporated under the laws of this state to transact business in such jurisdiction.

(3)(a) A foreign professional corporation shall (i) apply for a certificate of authority in the same manner as a foreign business corporation pursuant to sections 21-2,203 to 21-2,220 and (ii) file with the Secretary of State a current certificate of registration as provided in sections 21-2216 to 21-2218.

(b) Except as otherwise provided in the Nebraska Professional Corporation Act, foreign professional corporations shall enjoy all the powers, benefits, and privileges and shall be subject to all the duties, restrictions, and liabilities of a foreign business corporation under sections 21-301 to 21-325.02 and the Nebraska Model Business Corporation Act.

(c) A foreign professional corporation shall not be required as a condition to obtaining a certificate of authority to have all of its shareholders, directors, and officers licensed to render professional services in this state if all of its shareholders, directors, and officers, except the secretary and assistant secretary, are licensed in one or more states or territories of the United States or the District of Columbia to render a professional service described in its articles of incorporation and any shareholder, director, officer, employee, or agent who renders professional services within this state on behalf of the foreign professional corporation is licensed to render professional services in this state.

(d) A foreign professional corporation is not required to obtain a certificate of authority to transact business in this state unless it maintains or intends to maintain an office in this state for the conduct of business or professional practice.

(4) For purposes of this section, foreign professional corporation means a corporation which is organized under the law of any other state or territory of the United States or the District of Columbia for the specific purpose of rendering professional services and which has as its shareholders only individuals who are duly licensed or otherwise legally authorized to render the same professional services as the corporation.

Source: Laws 1994, LB 488, § 2; Laws 1995, LB 109, § 210; Laws 1995, LB 406, § 3; Laws 2004, LB 16, § 2; Laws 2014, LB749, § 272.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-2212 Death or disqualification of shareholder; purchase or redemption of shares; death or disqualification of last remaining shareholder; powers of successor in interest.

(1) The articles of incorporation or the bylaws of the professional corporation shall provide for the purchase or redemption of the shares of any shareholder

upon his or her death or disqualification to render the professional services of the professional corporation within this state.

(2) Unless otherwise provided in the articles of incorporation or the bylaws of the professional corporation, upon the death or disqualification of the last remaining shareholder of a professional corporation, a successor in interest to such deceased or disqualified shareholder may dissolve the corporation and wind up and liquidate its business and affairs, notwithstanding the fact that such successor in interest could not have become a shareholder of the professional corporation. The successor in interest may file articles of dissolution with the Secretary of State in accordance with section 21-2,186. Thereafter, the successor in interest may wind up and liquidate the corporation's business and affairs in accordance with section 21-2,188 and notify claimants in accordance with sections 21-2,189 and 21-2,190.

Source: Laws 1969, c. 121, § 12, p. 558; Laws 2010, LB759, § 1; Laws 2014, LB749, § 273.

21-2216 Regulating board; certificate of registration; contents; filing; fee; display; electronic access; Secretary of State; duty; corporate suspension or dissolution; when.

(1) No corporation shall open, operate, or maintain an establishment or do business for any purposes set forth in the Nebraska Professional Corporation Act without (a) filing with the Secretary of State a certificate of registration from the regulating board of the particular profession for which the professional corporation is organized to do business, which certificate shall set forth the name and residence addresses of all shareholders as of the last day of the month preceding such filing, and (b) certifying that all shareholders, directors, and officers, except the secretary and the assistant secretary, are duly licensed to render the same professional services as those for which the corporation was organized. Application for a certificate of registration shall be made by the professional corporation to the regulating board in writing and shall contain the names of all officers, directors, shareholders, and professional employees of the professional corporation, the street address at which the applicant proposes to perform professional services, and such other information as may be required by the regulating board.

(2) If it appears to the regulating board that each shareholder, officer, director, and professional employee of the applicant, except the secretary and the assistant secretary, is licensed to practice the profession of the applicant and that each shareholder, officer, director, or professional employee is not otherwise disqualified from performing the professional services of the applicant, such regulating board shall certify, in duplicate upon a form bearing its date of issuance and prescribed by such regulating board, that such proposed or existing professional corporation complies with the provisions of the act and of the applicable rules and regulations of such regulating board. Each applicant for such registration certificate shall pay such regulating board a fee of twenty-five dollars for the issuance of such duplicate certificate.

(3) One copy of such certificate shall be prominently exposed to public view upon the premises of the principal place of business of each professional corporation organized under the act, and one copy shall be filed by the professional corporation with the Secretary of State who shall charge a fee as specified in section 21-205. The certificate from the regulating board shall be

filed in the office of the Secretary of State together with the articles of incorporation. A registration certificate bearing an issuance date more than twelve months old shall not be eligible for filing with the Secretary of State.

(4) When licensing records of regulating boards are electronically accessible, the Secretary of State shall access the records. The access shall be made in lieu of the certificate of registration or registration certificate being prepared and issued by the regulating board. The professional corporation shall file with the Secretary of State an application setting forth the name and residence addresses of all officers, directors, shareholders, and professional employees as of the last day of the month preceding the date of the application and shall file with the Secretary of State an annual update thereafter. Each application shall be accompanied by a licensure verification fee as specified in section 21-205. The Secretary of State shall verify that all of the directors, officers, shareholders, and professional employees listed on the application, except for the secretary and assistant secretary, are duly licensed or otherwise legally authorized to render the same professional service or an ancillary service as those for which the professional corporation was organized. Verification shall be done by electronically accessing the regulating board's licensing records. If any director, officer, shareholder, or professional employee is not licensed or otherwise legally authorized to perform the professional service that the professional corporation was organized to render, the corporation will be suspended. The biennial report and tax cannot be filed and paid in the office of the Secretary of State until the corporation attests in writing that the director, officer, shareholder, or professional employee is licensed or otherwise legally authorized to practice, which shall be verified by the Secretary of State, or is no longer a director, officer, shareholder, or professional employee of the corporation. When the biennial report and the tax become delinquent, the corporation shall be dissolved for nonpayment of taxes in compliance with section 21-323.

Source: Laws 1969, c. 121, § 16, p. 560; Laws 1971, LB 489, § 1; Laws 1973, LB 157, § 4; Laws 1976, LB 749, § 1; Laws 1982, LB 928, § 16; Laws 1992, LB 1019, § 27; Laws 1995, LB 406, § 4; Laws 2003, LB 524, § 18; Laws 2008, LB379, § 20; Laws 2020, LB910, § 8.

Operative date July 1, 2021.

ARTICLE 23

NEBRASKA INDUSTRIAL DEVELOPMENT CORPORATION ACT

Section

21-2307. Board of directors; qualifications; expenses; public meetings.

21-2307 Board of directors; qualifications; expenses; public meetings.

The corporation shall have a board of directors in which all powers of the corporation shall be vested and which shall consist of any number of directors, not less than three, all of whom shall be duly qualified electors of and taxpayers in the local political subdivision. The directors shall serve without compensation, except that they shall be reimbursed for expenses incurred in the performance of their duties under the Nebraska Industrial Development Corporation Act pursuant to sections 81-1174 to 81-1177. The directors shall be elected by

the governing body of the local political subdivision. Any meeting held by the board of directors for any purpose shall be open to the public.

Source: Laws 1972, LB 1517, § 7; Laws 1981, LB 204, § 20; Laws 1995, LB 494, § 7; Laws 2020, LB381, § 16.

Operative date January 1, 2021.

ARTICLE 24

SHAREHOLDERS PROTECTION ACT

Section

21-2439. Control-share acquisition, defined.

21-2439 Control-share acquisition, defined.

Control-share acquisition shall mean an acquisition, directly or indirectly, by an acquiring person of ownership of voting stock of an issuing public corporation that, except for the Shareholders Protection Act, would, when added to all other shares of the issuing public corporation owned by the acquiring person, entitle the acquiring person, immediately after the acquisition, to exercise or direct the exercise of a new range of voting power within any of the following ranges of voting power: (1) At least twenty percent but less than thirty-three and one-third percent; (2) at least thirty-three and one-third percent but less than or equal to fifty percent; or (3) over fifty percent.

The acquisition of any shares of an issuing public corporation shall not constitute a control-share acquisition if the acquisition is consummated in any of the following circumstances: (a) Before April 9, 1988; (b) pursuant to a contract existing before April 9, 1988; (c) pursuant to the laws of descent and distribution; (d) pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing the Shareholders Protection Act; (e) pursuant to a merger or plan of share exchange effected in compliance with sections 21-2,161 to 21-2,168 if the issuing public corporation is a party to the plan of merger or plan of share exchange; or (f) from a person who owns over fifty percent of the shares of an issuing public corporation and who acquired the shares prior to April 9, 1988.

All shares, the ownership of which is acquired within a one-hundred-twenty-day period, and all shares, the ownership of which is acquired pursuant to a plan to make a control-share acquisition, shall be deemed to have been acquired in the same acquisition.

Source: Laws 1988, LB 1110, § 9; Laws 1995, LB 109, § 211; Laws 2014, LB749, § 274.

ARTICLE 26

LIMITED LIABILITY COMPANIES

Section

21-2601. Repealed. Laws 2013, LB 283, § 10.
 21-2601.01. Repealed. Laws 2013, LB 283, § 10.
 21-2602. Repealed. Laws 2013, LB 283, § 10.
 21-2603. Repealed. Laws 2013, LB 283, § 10.
 21-2604. Repealed. Laws 2013, LB 283, § 10.
 21-2604.01. Repealed. Laws 2013, LB 283, § 10.
 21-2605. Repealed. Laws 2013, LB 283, § 10.
 21-2606. Repealed. Laws 2013, LB 283, § 10.

Section	
21-2607.	Repealed. Laws 2013, LB 283, § 10.
21-2608.	Repealed. Laws 2013, LB 283, § 10.
21-2609.	Repealed. Laws 2013, LB 283, § 10.
21-2610.	Repealed. Laws 2013, LB 283, § 10.
21-2611.	Repealed. Laws 2013, LB 283, § 10.
21-2612.	Repealed. Laws 2013, LB 283, § 10.
21-2613.	Repealed. Laws 2013, LB 283, § 10.
21-2614.	Repealed. Laws 2013, LB 283, § 10.
21-2615.	Repealed. Laws 2013, LB 283, § 10.
21-2616.	Repealed. Laws 2013, LB 283, § 10.
21-2617.	Repealed. Laws 2013, LB 283, § 10.
21-2617.01.	Repealed. Laws 2013, LB 283, § 10.
21-2618.	Repealed. Laws 2013, LB 283, § 10.
21-2619.	Repealed. Laws 2013, LB 283, § 10.
21-2620.	Repealed. Laws 2013, LB 283, § 10.
21-2621.	Repealed. Laws 2013, LB 283, § 10.
21-2622.	Repealed. Laws 2013, LB 283, § 10.
21-2623.	Repealed. Laws 2013, LB 283, § 10.
21-2624.	Repealed. Laws 2013, LB 283, § 10.
21-2625.	Repealed. Laws 2013, LB 283, § 10.
21-2626.	Repealed. Laws 2013, LB 283, § 10.
21-2627.	Repealed. Laws 2013, LB 283, § 10.
21-2628.	Repealed. Laws 2013, LB 283, § 10.
21-2629.	Repealed. Laws 2013, LB 283, § 10.
21-2630.	Repealed. Laws 2013, LB 283, § 10.
21-2631.	Repealed. Laws 2013, LB 283, § 10.
21-2631.01.	Repealed. Laws 2013, LB 283, § 10.
21-2631.02.	Repealed. Laws 2013, LB 283, § 10.
21-2631.03.	Repealed. Laws 2013, LB 283, § 10.
21-2632.	Repealed. Laws 2013, LB 283, § 10.
21-2632.01.	Repealed. Laws 2013, LB 283, § 10.
21-2633.	Repealed. Laws 2013, LB 283, § 10.
21-2634.	Repealed. Laws 2013, LB 283, § 10.
21-2635.	Repealed. Laws 2013, LB 283, § 10.
21-2636.	Repealed. Laws 2013, LB 283, § 10.
21-2637.	Repealed. Laws 2013, LB 283, § 10.
21-2638.	Repealed. Laws 2013, LB 283, § 10.
21-2639.	Repealed. Laws 2013, LB 283, § 10.
21-2640.	Repealed. Laws 2013, LB 283, § 10.
21-2641.	Repealed. Laws 2013, LB 283, § 10.
21-2642.	Repealed. Laws 2013, LB 283, § 10.
21-2643.	Repealed. Laws 2013, LB 283, § 10.
21-2644.	Repealed. Laws 2013, LB 283, § 10.
21-2645.	Repealed. Laws 2013, LB 283, § 10.
21-2646.	Repealed. Laws 2013, LB 283, § 10.
21-2647.	Repealed. Laws 2013, LB 283, § 10.
21-2648.	Repealed. Laws 2013, LB 283, § 10.
21-2649.	Repealed. Laws 2013, LB 283, § 10.
21-2650.	Repealed. Laws 2013, LB 283, § 10.
21-2651.	Repealed. Laws 2013, LB 283, § 10.
21-2652.	Repealed. Laws 2013, LB 283, § 10.
21-2653.	Repealed. Laws 2013, LB 283, § 10.
21-2654.	Repealed. Laws 2013, LB 283, § 10.

21-2601 Repealed. Laws 2013, LB 283, § 10.

21-2601.01 Repealed. Laws 2013, LB 283, § 10.

21-2602 Repealed. Laws 2013, LB 283, § 10.

21-2603 Repealed. Laws 2013, LB 283, § 10.

- 21-2604 Repealed. Laws 2013, LB 283, § 10.
- 21-2604.01 Repealed. Laws 2013, LB 283, § 10.
- 21-2605 Repealed. Laws 2013, LB 283, § 10.
- 21-2606 Repealed. Laws 2013, LB 283, § 10.
- 21-2607 Repealed. Laws 2013, LB 283, § 10.
- 21-2608 Repealed. Laws 2013, LB 283, § 10.
- 21-2609 Repealed. Laws 2013, LB 283, § 10.
- 21-2610 Repealed. Laws 2013, LB 283, § 10.
- 21-2611 Repealed. Laws 2013, LB 283, § 10.
- 21-2612 Repealed. Laws 2013, LB 283, § 10.
- 21-2613 Repealed. Laws 2013, LB 283, § 10.
- 21-2614 Repealed. Laws 2013, LB 283, § 10.
- 21-2615 Repealed. Laws 2013, LB 283, § 10.
- 21-2616 Repealed. Laws 2013, LB 283, § 10.
- 21-2617 Repealed. Laws 2013, LB 283, § 10.
- 21-2617.01 Repealed. Laws 2013, LB 283, § 10.
- 21-2618 Repealed. Laws 2013, LB 283, § 10.
- 21-2619 Repealed. Laws 2013, LB 283, § 10.
- 21-2620 Repealed. Laws 2013, LB 283, § 10.
- 21-2621 Repealed. Laws 2013, LB 283, § 10.
- 21-2622 Repealed. Laws 2013, LB 283, § 10.
- 21-2623 Repealed. Laws 2013, LB 283, § 10.
- 21-2624 Repealed. Laws 2013, LB 283, § 10.
- 21-2625 Repealed. Laws 2013, LB 283, § 10.
- 21-2626 Repealed. Laws 2013, LB 283, § 10.
- 21-2627 Repealed. Laws 2013, LB 283, § 10.
- 21-2628 Repealed. Laws 2013, LB 283, § 10.
- 21-2629 Repealed. Laws 2013, LB 283, § 10.
- 21-2630 Repealed. Laws 2013, LB 283, § 10.
- 21-2631 Repealed. Laws 2013, LB 283, § 10.
- 21-2631.01 Repealed. Laws 2013, LB 283, § 10.

- 21-2631.02 Repealed. Laws 2013, LB 283, § 10.
- 21-2631.03 Repealed. Laws 2013, LB 283, § 10.
- 21-2632 Repealed. Laws 2013, LB 283, § 10.
- 21-2632.01 Repealed. Laws 2013, LB 283, § 10.
- 21-2633 Repealed. Laws 2013, LB 283, § 10.
- 21-2634 Repealed. Laws 2013, LB 283, § 10.
- 21-2635 Repealed. Laws 2013, LB 283, § 10.
- 21-2636 Repealed. Laws 2013, LB 283, § 10.
- 21-2637 Repealed. Laws 2013, LB 283, § 10.
- 21-2638 Repealed. Laws 2013, LB 283, § 10.
- 21-2639 Repealed. Laws 2013, LB 283, § 10.
- 21-2640 Repealed. Laws 2013, LB 283, § 10.
- 21-2641 Repealed. Laws 2013, LB 283, § 10.
- 21-2642 Repealed. Laws 2013, LB 283, § 10.
- 21-2643 Repealed. Laws 2013, LB 283, § 10.
- 21-2644 Repealed. Laws 2013, LB 283, § 10.
- 21-2645 Repealed. Laws 2013, LB 283, § 10.
- 21-2646 Repealed. Laws 2013, LB 283, § 10.
- 21-2647 Repealed. Laws 2013, LB 283, § 10.
- 21-2648 Repealed. Laws 2013, LB 283, § 10.
- 21-2649 Repealed. Laws 2013, LB 283, § 10.
- 21-2650 Repealed. Laws 2013, LB 283, § 10.
- 21-2651 Repealed. Laws 2013, LB 283, § 10.
- 21-2652 Repealed. Laws 2013, LB 283, § 10.
- 21-2653 Repealed. Laws 2013, LB 283, § 10.
- 21-2654 Repealed. Laws 2013, LB 283, § 10.

ARTICLE 29**NEBRASKA LIMITED COOPERATIVE ASSOCIATION ACT**

PART 2—FILING AND REPORTS

- Section
21-2923. Biennial report.
21-2924. Filing fees.

PART 7—DIRECTORS AND OFFICERS

- 21-2971. Conflict of interest.

Section

PART 8—INDEMNIFICATION

21-2976. Indemnification.

PART 11—DISSOLUTION

21-2995. Reinstatement following administrative dissolution.

PART 2—FILING AND REPORTS

21-2923 Biennial report.

(1) A limited cooperative association or a foreign limited cooperative association authorized to transact business in this state shall deliver to the Secretary of State for filing a biennial report that states:

(a) The name of the limited cooperative association or foreign limited cooperative association;

(b) The street and mailing addresses of the limited cooperative association's or foreign limited cooperative association's designated office and the name and street and mailing addresses of its agent for service of process in this state;

(c) In the case of a limited cooperative association, the street and mailing addresses of its principal office if different from its designated office; and

(d) In the case of a foreign limited cooperative association, the state or other jurisdiction under whose law the foreign limited cooperative association is formed and any alternative name adopted under section 21-29,106.

(2) Information in the biennial report must be current as of the date the biennial report is delivered to the Secretary of State.

(3) Commencing on January 1, 2009, a biennial report shall be filed between January 1 and April 1 of each odd-numbered year following the year in which a limited cooperative association files articles of organization or a foreign limited cooperative association becomes authorized to transact business in this state.

(4) If a biennial report does not contain the information required in subsection (1) of this section, the Secretary of State shall promptly notify the reporting limited cooperative association or foreign limited cooperative association and return the report for correction. If the report is corrected to contain the information required in subsection (1) of this section and delivered to the Secretary of State within thirty days after the effective date of the notice, it is timely delivered.

(5) If a filed biennial report contains an address of a designated office or the name or address of an agent for service of process which differs from the information shown in the records of the Secretary of State immediately before the filing, the differing information in the biennial report is considered a statement of change under section 21-2914.

(6) If a limited cooperative association fails to file a biennial report under this section, the Secretary of State may proceed under section 21-2994 to administratively dissolve the limited cooperative association.

(7) If a foreign limited cooperative association fails to file a biennial report under this section, the Secretary of State may proceed under section 21-29,107 to revoke the certificate of authority of the foreign limited cooperative association.

(8) A correction or an amendment to the biennial report may be delivered to the Secretary of State for filing at any time.

Source: Laws 2007, LB368, § 23; Laws 2014, LB774, § 4.

21-2924 Filing fees.

The filing fees for records filed under the Nebraska Limited Cooperative Association Act with the Secretary of State are governed by section 33-101. The fees for filings under the act shall be paid to the Secretary of State, and the Secretary of State shall remit the fees to the State Treasurer. The State Treasurer shall credit sixty percent of the fees to the General Fund and forty percent of the fees to the Secretary of State Cash Fund.

Source: Laws 2007, LB368, § 24; Laws 2020, LB910, § 9.
Operative date July 1, 2021.

PART 7—DIRECTORS AND OFFICERS

21-2971 Conflict of interest.

Except as otherwise provided in section 21-2970, the Nebraska Model Business Corporation Act governs conflicts of interests between a director or member of a committee of the board of directors and the limited cooperative association.

Source: Laws 2007, LB368, § 71; Laws 2014, LB749, § 275.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

PART 8—INDEMNIFICATION

21-2976 Indemnification.

Indemnification of any individual who has incurred liability, is a party, or is threatened to be made a party because of the performance of duties to, or activity on behalf of, the limited cooperative association is governed by the Nebraska Model Business Corporation Act.

Source: Laws 2007, LB368, § 76; Laws 2014, LB749, § 276.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

PART 11—DISSOLUTION

21-2995 Reinstatement following administrative dissolution.

(1) A limited cooperative association that has been administratively dissolved may apply to the Secretary of State for reinstatement within five years after the effective date of its administrative dissolution. The application shall be delivered to the Secretary of State for filing and state:

(a) The name of the limited cooperative association and the effective date of its administrative dissolution;

(b) That the grounds for dissolution either did not exist or have been eliminated; and

(c) That the limited cooperative association's name satisfies the requirements of sections 21-2906 to 21-2908.

(2) If the Secretary of State determines that (a) the application for reinstatement contains the information required by subsection (1) of this section and that the information is correct and (b) the limited cooperative association has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed biennial report for the current year, the Secretary of State shall:

- (a) Prepare a declaration of reinstatement that states this determination;
- (b) Sign and file the original of the declaration of reinstatement; and
- (c) Serve the limited cooperative association with a copy.

(3) A limited cooperative association that has been administratively dissolved for more than five years may apply to the Secretary of State for late reinstatement. The application shall be delivered to the Secretary of State for filing, along with the fee set forth in section 21-2924, and state:

- (a) The name of the limited cooperative association and the effective date of its administrative dissolution;
- (b) That the grounds for dissolution either did not exist or have been eliminated;
- (c) That the limited cooperative association's name satisfies the requirements of sections 21-2906 to 21-2908;
- (d) That a legitimate reason exists for reinstatement and what such legitimate reason is; and
- (e) That such reinstatement does not constitute fraud on the public.

(4) If the Secretary of State determines that (a) the application for late reinstatement contains the information required by subsection (3) of this section and that the information is correct and (b) the limited cooperative association has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed biennial report for the current year, the Secretary of State shall:

- (a) Prepare a declaration of late reinstatement that states this determination;
- (b) Sign and file the original of the declaration of reinstatement; and
- (c) Serve the limited cooperative association with a copy.

(5) When reinstatement becomes effective it relates back to and takes effect as of the effective date of the administrative dissolution and the limited cooperative association may resume or continue its activities as if the administrative dissolution had never occurred.

Source: Laws 2007, LB368, § 95; Laws 2012, LB854, § 8; Laws 2015, LB279, § 15.

COUNTY GOVERNMENT AND OFFICERS

CHAPTER 23
COUNTY GOVERNMENT AND OFFICERS

Article.

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 - (b) Powers and Duties of County Board. 23-107.01 to 23-135.01.
 - (c) Commissioner System. 23-148 to 23-151.
 - (e) County Zoning. 23-172, 23-174.03.
 - (j) Ordinances. 23-187.
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 - (a) Adoption of Township Organization; General Provisions. 23-202 to 23-206.
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ARTICLE 1

GENERAL PROVISIONS

(a) CORPORATE POWERS

Section

23-104.03. Power to provide protective services.

(b) POWERS AND DUTIES OF COUNTY BOARD

23-107.01. Real estate owned by county; sale or lease; terms and procedures.

§ 23-104.03

COUNTY GOVERNMENT AND OFFICERS

Section

- 23-114.02. Comprehensive development plan; contents.
- 23-135.01. Claims; false statements or representations; penalties.

(c) COMMISSIONER SYSTEM

- 23-148. Commissioners; number; election; when authorized.
- 23-149. Commissioners; number; petition to change; resolution by county board; election; ballot; form.
- 23-150. Commissioners; qualifications.
- 23-151. Commissioner system; districts; number; redistricting; duties of county board; commissioners; election.

(e) COUNTY ZONING

- 23-172. Standard codes; adoption; copy; area where applicable.
- 23-174.03. County zoning; cities of the primary class; subdivision and platting into lots and streets; approval requirements; filing of plat; effect.

(j) ORDINANCES

- 23-187. Subjects regulated; power to enforce.

(a) CORPORATE POWERS

23-104.03 Power to provide protective services.

Each county shall have the authority (1) to plan, initiate, fund, maintain, administer, and evaluate facilities, programs, and services that meet the rehabilitation, treatment, care, training, educational, residential, diagnostic, evaluation, community supervision, and protective service needs of dependent, aged, blind, disabled, ill, or infirm persons, persons with a mental disorder, and persons with an intellectual disability domiciled in the county, (2) to purchase outright by installment contract or by mortgage with the power to borrow funds in connection with such contract or mortgage, hold, sell, and lease for a period of more than one year real estate necessary for use of the county to plan, initiate, fund, maintain, administer, and evaluate such facilities, programs, and services, (3) to lease personal property necessary for such facilities, programs, and services, and such lease may provide for installment payments which extend over a period of more than one year, notwithstanding the provisions of section 23-132 or 23-916, (4) to enter into compacts with other counties, state agencies, other political subdivisions, and private nonprofit agencies to exercise and carry out the powers to plan, initiate, fund, maintain, administer, and evaluate such facilities, programs, and services, and (5) to contract for such services from agencies, either public or private, which provide such services on a vendor basis. Compacts with other public agencies pursuant to subdivision (4) of this section shall be subject to the Interlocal Cooperation Act.

Source: Laws 1971, LB 599, § 1; Laws 1972, LB 1266, § 1; Laws 1985, LB 393, § 15; Laws 1986, LB 1177, § 4; Laws 2013, LB23, § 2.

Cross References

Interlocal Cooperation Act, see section 13-801.

(b) POWERS AND DUTIES OF COUNTY BOARD

23-107.01 Real estate owned by county; sale or lease; terms and procedures.

(1)(a) Except as provided in subsection (2) of this section and section 80-329, any county board has power to sell or lease real estate owned by the county and not required for county purposes at a fair market value regardless of the value

of the property. The county board of such county shall hold an open and public hearing prior to any such sale or lease at which any interested party may appear and speak for or against the sale or lease and raise any issue regarding the fair market value of the property as determined by the county board. Public notice of any such public hearing shall be run once each week for two consecutive weeks prior to the hearing date in any newspaper or legal publication distributed generally throughout the county.

(b) The county board shall set a date of sale which shall be within two months of the date of public hearing pursuant to subdivision (1)(a) of this section and shall offer such real estate for sale or lease to the highest bidder.

(c) The county board shall cause to be printed and published once at least ten days prior to the sale or lease in a legal newspaper in the county an advertisement for bids on the property to be sold or leased. The advertisement shall state the legal description and address of the real estate and that the real estate shall be sold or leased to the highest bidder.

(d) If the county board receives no bids or if the bids received are substantially lower than the fair market value, the county board may negotiate a contract for sale or lease of the real estate if such negotiated contract is in the best interests of the county.

(2) A county board may, by majority vote, sell real estate owned by the county in fee simple to another political subdivision in fee simple in such manner and upon such terms and conditions as may be deemed in the best interest of the county. A county board shall cause to be printed and published at least thirty days prior to the sale in a legal newspaper in the county a notice of the intent to sell county real estate to another political subdivision. The notice shall state the legal description and address of the real estate to be sold.

Source: Laws 1975, LB 125, § 2; Laws 1976, LB 805, § 1; Laws 1979, LB 187, § 93; Laws 1980, LB 184, § 10; Laws 1997, LB 396, § 1; Laws 2019, LB525, § 1.

23-114.02 Comprehensive development plan; contents.

The general plan for the improvement and development of the county shall be known as the comprehensive development plan and shall, among other elements, include:

(1) A land-use element which designates the proposed general distribution, general location, and extent of the uses of land for agriculture, housing, commerce, industry, recreation, education, public buildings and lands, and other categories of public and private use of land;

(2) The general location, character, and extent of existing and proposed major streets, roads, and highways, and air and other transportation routes and facilities;

(3) When a new comprehensive plan or a full update to an existing comprehensive plan is developed, an energy element which: Assesses energy infrastructure and energy use by sector, including residential, commercial, and industrial sectors; evaluates utilization of renewable energy sources; and promotes energy conservation measures that benefit the community; and

(4) The general location, type, capacity, and area served of present and projected or needed community facilities including recreation facilities, schools, libraries, other public buildings, and public utilities and services.

The comprehensive development plan shall consist of both graphic and textual material and shall be designed to accommodate anticipated long-range future growth which shall be based upon documented population and economic projections.

Source: Laws 1967, c. 117, § 3, p. 368; Laws 2010, LB997, § 4; Laws 2020, LB731, § 4.
Effective date November 14, 2020.

23-135.01 Claims; false statements or representations; penalties.

Whoever files any claim against any county as provided in section 23-135, knowing the claim to contain any false statement or representation as to a material fact, or whoever obtains or receives any money or any warrant for money from any county knowing that the claim therefor was based on a false statement or representation as to a material fact, if the amount claimed or money obtained or received or if the face value of the warrant for money shall be one thousand five hundred dollars or more, shall be guilty of a Class IV felony. If the amount is five hundred dollars or more but less than one thousand five hundred dollars, the person so offending shall be guilty of a Class II misdemeanor. If the amount is less than five hundred dollars, the person so offending shall be guilty of a Class III misdemeanor.

Source: Laws 1957, c. 59, § 2, p. 277; Laws 1977, LB 40, § 84; Laws 2015, LB605, § 5.

(c) COMMISSIONER SYSTEM

23-148 Commissioners; number; election; when authorized.

The county board of commissioners in all counties having not more than four hundred thousand inhabitants as determined by the most recent federal decennial census shall consist of three persons except as follows:

(1) Pursuant to petitions filed or a vote of the county board under section 23-149, the registered voters in any county containing not more than four hundred thousand inhabitants as determined by the most recent federal decennial census may vote at any general election as to whether their county board shall consist of three or five commissioners. Upon the completion of the canvass by the county canvassing board, the proposition shall be decided and, if the number of commissioners is increased from three to five commissioners, vacancies shall be deemed to exist and the procedures set forth in sections 32-567 and 32-574 shall be instituted; and

(2) The registered voters of any county under township organization voting to discontinue township organization may also vote as to the number of county commissioners as provided in sections 23-292 to 23-299.

Source: Laws 1879, § 53, p. 369; Laws 1887, c. 29, § 1, p. 359; Laws 1891, c. 21, § 1, p. 225; Laws 1903, c. 30, § 1, p. 277; R.S.1913, § 978; Laws 1917, c. 16, § 1, p. 77; Laws 1919, c. 69, § 1, p. 182; C.S.1922, § 878; C.S.1929, § 26-132; R.S.1943, § 23-148; Laws 1945, c. 42, § 1, p. 202; Laws 1947, c. 62, § 2, p. 197; Laws 1951, c. 48, § 1, p. 165; Laws 1957, c. 60, § 1, p. 278; Laws 1979, LB 331, § 2; Laws 1985, LB 53, § 1; Laws 1991, LB 789, § 4; Laws 1994, LB 76, § 534; Laws 2008, LB269, § 1; Laws 2015, LB575, § 3; Laws 2016, LB742, § 3; Laws 2019, LB411, § 23.

Cross References

For discontinuance of township organization, see sections 23-292 to 23-299.

23-149 Commissioners; number; petition to change; resolution by county board; election; ballot; form.

(1)(a) In counties not under township organization, a registered voter may file a petition or petitions for the submission of the question regarding the number of commissioners on the county board. The petition or petitions shall be signed by registered voters equal in number to five percent of the voters registered in the county at the preceding statewide general election.

(b) In counties not under township organization, the county board may, by majority vote of all members, adopt a resolution for the submission of the question regarding the number of commissioners on the county board.

(2) When the petition or petitions or the resolution is filed with the election commissioner or county clerk not less than seventy days before the date of any general election, the election commissioner or county clerk shall cause the question to be submitted to the voters of the county at such election and give notice thereof in the general notice of such election. The forms of ballots shall be respectively: For three commissioners and For five commissioners; and the same shall be printed upon the regular ballots cast for officers voted for at such election and shall be counted and canvassed in the same manner.

(3) If a majority of votes cast at the election favor the proposition For five commissioners, thereafter the county shall have five commissioners, and if a majority of the ballots cast at the election favor the proposition For three commissioners, thereafter the county shall have three commissioners.

Source: Laws 1891, c. 21, § 1, p. 226; Laws 1903, c. 30, § 1, p. 277; R.S.1913, § 978; Laws 1917, c. 18, § 1, p. 78; Laws 1919, c. 69, § 1, p. 183; C.S.1922, § 878; C.S.1929, § 26-132; R.S.1943, § 23-149; Laws 1969, c. 259, § 1, p. 958; Laws 1973, LB 75, § 1; Laws 1991, LB 789, § 5; Laws 2008, LB269, § 2; Laws 2019, LB411, § 24.

23-150 Commissioners; qualifications.

(1) The commissioners shall be registered voters and residents of their respective districts.

(2) Beginning in 1992, any person seeking nomination or election to the county board of commissioners in a county having more than four hundred thousand inhabitants as determined by the most recent federal decennial census shall have resided within the district he or she seeks to represent for at least six months immediately prior to the date on which he or she is required to file as a candidate for such office. No person shall be eligible to be appointed to the county board in such counties unless he or she has resided in the district he or she would represent for at least six months prior to assuming office.

(3) This section shall be complied with within six months after a determination that the population has reached more than four hundred thousand inhabitants as determined by the most recent federal decennial census.

Source: Laws 1879, § 53, p. 369; Laws 1887, c. 29, § 1, p. 359; Laws 1891, c. 21, § 1, p. 227; Laws 1903, c. 30, § 1, p. 278; R.S.1913, § 978; Laws 1917, c. 16, § 1, p. 78; Laws 1919, c. 69, § 1, p. 183;

C.S.1922, § 878; C.S.1929, § 26-132; R.S.1943, § 23-150; Laws 1991, LB 789, § 6; Laws 1994, LB 76, § 535; Laws 2016, LB742, § 4.

23-151 Commissioner system; districts; number; redistricting; duties of county board; commissioners; election.

(1) Each county under commissioner organization having not more than four hundred thousand inhabitants as determined by the most recent federal decennial census shall be divided into (a) three districts numbered respectively, one, two, and three, (b) five districts as provided for in sections 23-148 and 23-149 numbered respectively, one, two, three, four, and five, or (c) seven districts as provided for in sections 23-292 to 23-299 numbered respectively, one, two, three, four, five, six, and seven. Each county having more than four hundred thousand inhabitants as determined by the most recent federal decennial census shall be divided into seven districts numbered respectively, one, two, three, four, five, six, and seven.

(2) Such districts shall consist of two or more voting precincts comprising compact and contiguous territory and embracing a substantially equal division of the population of the county. District boundary lines shall not be subject to alteration more than once every ten years unless the county has a change in population requiring it to be redistricted pursuant to subdivision (3)(a) of this section or unless there is a vote to change from three to five districts as provided for in sections 23-148 and 23-149.

(3)(a) The establishment of district boundary lines pursuant to subsection (1) of this section shall be completed within one year after a county attains a population of more than four hundred thousand inhabitants as determined by the most recent federal decennial census. Beginning in 2001 and every ten years thereafter, the district boundary lines of any county having more than four hundred thousand inhabitants as determined by the most recent federal decennial census shall be redrawn, if necessary to maintain substantially equal district populations, by the date specified in section 32-553.

(b) The establishment of district boundary lines and any alteration thereof under this subsection shall be done by the county board. If the county board fails to do so by the applicable deadline, district boundaries shall be drawn by the election commissioner within six months after the deadline established for the drawing or redrawing of district boundaries by the county board. If the election commissioner fails to meet such deadline, the remedies established in subsection (3) of section 32-555 shall apply.

(4) The district boundary lines shall not be changed at any session of the county board unless all of the commissioners are present at such session.

(5) Commissioners shall be elected as provided in section 32-528. Elections shall be conducted as provided in the Election Act.

Source: Laws 1879, § 54, p. 369; Laws 1887, c. 29, § 2, p. 359; Laws 1891, c. 21, § 1, p. 227; Laws 1903, c. 30, § 1, p. 278; Laws 1913, c. 150, § 1, p. 386; R.S.1913, § 979; Laws 1915, c. 19, § 1, p. 78; Laws 1917, c. 16, § 2, p. 78; Laws 1919, c. 69, § 2, p. 183; C.S.1922, § 879; C.S.1929, § 26-133; Laws 1931, c. 39, § 1, p. 132; C.S.Supp.,1941, § 26-133; R.S.1943, § 23-151; Laws 1947, c. 62, § 3, p. 198; Laws 1963, c. 111, § 1, p. 439; Laws 1969, c. 148, § 1, p. 706; Laws 1973, LB 552, § 2; Laws 1978, LB 632,

§ 3; Laws 1979, LB 331, § 3; Laws 1990, LB 81, § 1; Laws 1991, LB 789, § 7; Laws 1994, LB 76, § 536; Laws 2008, LB268, § 1; Laws 2008, LB269, § 3; Laws 2016, LB742, § 5.

Cross References

Election Act, see section 32-101.

(e) COUNTY ZONING

23-172 Standard codes; adoption; copy; area where applicable.

(1) The county board may adopt by resolution, which shall have the force and effect of law, the conditions, provisions, limitations, and terms of a building or construction code, a plumbing code, an electrical code, a fire prevention code, or any other code relating to building or relating to the erection, construction, reconstruction, alteration, repair, conversion, maintenance, placing, or using of any building, structure, automobile trailer, house trailer, or cabin trailer. For this purpose, the county board may adopt any standard code which contains rules or regulations printed as a code in book or pamphlet form by reference to such code or portions thereof without setting forth in the resolution the conditions, provisions, limitations, or terms of such code. When such code or any such standard code or portion thereof is incorporated by reference into such resolution, it shall have the same force and effect as though it had been written in its entirety in such resolution without further or additional publication.

(2) Not less than one copy of such code or such standard code or portion thereof shall be kept for use and examination by the public in the office of the clerk of such county prior to the adoption thereof and as long as such standard code is in effect in such county.

(3) Any building or construction code implemented under this section shall be adopted and enforced as provided in section 71-6406.

(4) If there is no county resolution adopting a plumbing code in effect for such county, the 2009 Uniform Plumbing Code accredited by the American National Standards Institute shall apply to all buildings.

(5) Any code adopted and approved by the county board, as provided in this section, or if there is no county resolution adopting a plumbing code in effect for such county, the 2009 Uniform Plumbing Code accredited by the American National Standards Institute, and the building permit requirements or occupancy permit requirements imposed by such code or by sections 23-114.04 and 23-114.05, shall apply to all of the county except within the limits of any incorporated city or village and except within an unincorporated area where a city or village has been granted zoning jurisdiction and is exercising such jurisdiction.

(6) Nothing in this section shall be interpreted as creating an obligation for the county to inspect plumbing work done within its jurisdiction to determine compliance with the plumbing code.

Source: Laws 1941, c. 131, § 19, p. 515; C.S.Supp.,1941, § 26-159; R.S.1943, § 23-172; Laws 1961, c. 87, § 6, p. 302; Laws 1963, c. 57, § 5, p. 241; Laws 1967, c. 117, § 12, p. 375; Laws 1975, LB

410, § 28; Laws 1993, LB 35, § 1; Laws 1996, LB 1304, § 3; Laws 2012, LB42, § 3; Laws 2014, LB802, § 2; Laws 2016, LB704, § 212.

23-174.03 County zoning; cities of the primary class; subdivision and platting into lots and streets; approval requirements; filing of plat; effect.

(1) No owner of any real estate located in a county in which is located a city of the primary class, except within the area over which subdivision jurisdiction has been granted to any city or village, and such city or village is exercising such jurisdiction, shall be permitted to subdivide, plat, or lay out such real estate in building lots and 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 thereof by the county board of such county. In lieu of approval by the county board, the county board may designate specific types of plats which may be approved by the county planning commission or the planning director. No plat or subdivision of such real estate shall be recorded in the office of the register of deeds or have any force or effect unless the same is approved by the county board, the county planning commission, or the planning director of such county. Such a county shall have authority within the area described in this subsection (a) to regulate the subdivision of land for the purpose, whether immediate or future, of transfer of ownership or building development, except that the county shall have no power to regulate subdivision in those instances where the smallest parcel created is more than ten acres in area, (b) to prescribe standards for laying out subdivisions in harmony with the comprehensive plan, (c) to require the installation of improvements by the owner or by the creation of public improvement districts, or by requiring a good and sufficient bond guaranteeing installation of such improvements, and (d) to require the dedication of land for public purposes.

(2) For purposes of this section, subdivision means the division of a lot, tract, or parcel of land into two or more lots, sites, or other divisions of land for the purpose, whether immediate or future, of ownership or building development, except that the division of land shall not be considered to be subdivision when the smallest parcel created is more than ten acres in area.

(3) Subdivision plats shall be approved by the county planning commission on recommendation by the planning director and county engineer and may be submitted to the county board for its consideration and action. The county board may withhold approval of a plat until the county engineer has certified that the improvements required by the regulations have been satisfactorily installed or until a sufficient bond guaranteeing installation of the improvements has been posted with the county or until public improvement districts are created. The county board may provide procedures in land subdivision regulation for appeal by any person aggrieved by any action of the county planning commission or planning director.

(4) Any plat shall, after being filed with the register of deeds, be equivalent to a deed in fee simple absolute to the county, from the owner, of such portion of the land as is therein set apart for public use.

Source: Laws 1961, c. 87, § 8, p. 303; Laws 1978, LB 186, § 12; Laws 1980, LB 61, § 3; Laws 2005, LB 9, § 1; Laws 2019, LB525, § 2.

(j) ORDINANCES

23-187 Subjects regulated; power to enforce.

(1) In addition to the powers granted by section 23-104, a county may, in the manner specified by sections 23-187 to 23-193, regulate the following subjects by ordinance:

(a) Parking of motor vehicles on public roads, highways, and rights-of-way as it pertains to snow removal for and access by emergency vehicles to areas within the county;

(b) Motor vehicles as defined in section 60-339 that are abandoned on public or private property;

(c) Low-speed vehicles as described and operated pursuant to section 60-6,380;

(d) Golf car vehicles as described and operated pursuant to section 60-6,381;

(e) Graffiti on public or private property;

(f) False alarms from electronic security systems that result in requests for emergency response from law enforcement or other emergency responders;

(g) Violation of the public peace and good order of the county by disorderly conduct, lewd or lascivious behavior, or public nudity;

(h) Peddlers, hawkers, or solicitors operating for commercial purposes. If a county adopts an ordinance under this subdivision, the ordinance shall provide for registration of any such peddler, hawker, or solicitor without any fee and allow the operation or conduct of any registered peddler, hawker, or solicitor in all areas of the county where the county has jurisdiction and where a city or village has not otherwise regulated such operation or conduct; and

(i) Operation of vehicles on any highway or restrictions on the weight of vehicles pursuant to section 60-681.

(2) For the enforcement of any ordinance authorized by this section, a county may impose fines, forfeitures, or penalties and provide for the recovery, collection, and enforcement of such fines, forfeitures, or penalties. A county may also authorize such other measures for the enforcement of ordinances as may be necessary and proper. A fine enacted pursuant to this section shall not exceed five hundred dollars for each offense.

Source: Laws 2009, LB532, § 1; Laws 2011, LB289, § 2; Laws 2012, LB1155, § 1; Laws 2015, LB577, § 1; Laws 2016, LB977, § 4.

ARTICLE 2**COUNTIES UNDER TOWNSHIP ORGANIZATION**

(a) ADOPTION OF TOWNSHIP ORGANIZATION; GENERAL PROVISIONS

Section

23-202. Township organization; petition; filing; election.

23-204. Supervisor districts; formation; election of supervisors.

23-206. Supervisor districts; cities and villages.

(b) COUNTY BOARDS IN COUNTIES UNDER TOWNSHIP ORGANIZATION

23-277. County supervisors; quorum.

(d) DISCONTINUANCE OF TOWNSHIP ORGANIZATION

23-293. Township organization; discontinuance; procedure.

Section

(e) TERMINATION OF TOWNSHIP BOARD

23-2,100. Termination of township board; public hearing; notice; resolution; termination date; conduct of business; disposal of property; discontinuance of township organization of county.

(a) ADOPTION OF TOWNSHIP ORGANIZATION; GENERAL PROVISIONS

23-202 Township organization; petition; filing; election.

(1) In counties not under township organization, a registered voter may file a petition or petitions for the submission of the question of township organization. The petition or petitions shall be signed by registered voters equal in number to five percent of the voters registered in the county at the preceding statewide general election.

(2) The petition or petitions shall be filed in the office of the election commissioner or county clerk by September 1 of the year of the general election at which the petitioners wish to have the question submitted for a vote. If such petition or petitions are filed in conformance with this subsection, the question shall be submitted to the registered voters at the next general election held after the filing of the petition or petitions. The questions on the ballot shall be respectively: For changing to township organization with a seven-member county board of supervisors; or Against changing to township organization.

(3) Elections shall be conducted as provided in the Election Act.

Source: Laws 1895, c. 28, § 2, p. 131; R.S.1913, § 988; C.S.1922, § 888; C.S.1929, § 26-202; R.S.1943, § 23-202; Laws 2008, LB269, § 4; Laws 2009, LB434, § 1; Laws 2019, LB411, § 25.

Cross References

Election Act, see section 32-101.

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.

Cross References

Election of officers, see sections 32-529 and 32-530.

23-206 Supervisor districts; cities and villages.

In the event any city having one 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 have enough inhabitants to form one supervisor district, then such city shall constitute one district, or in case the number of inhabitants is fewer than the number in the other districts, then so much contiguous territory shall be added to such city to give it sufficient inhabitants for one supervisor district. Villages may be enumerated with general districts, counting all the inhabitants therein as being within the districts wherein such town or village is situated. No village, or any part thereof, shall be included in or made a part of any supervisor district containing a city having one 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, or containing any part of such city.

Source: Laws 1895, c. 28, § 6, p. 133; R.S.1913, § 992; Laws 1917, c. 17, § 2, p. 82; C.S.1922, § 892; C.S.1929, § 26-206; R.S.1943, § 23-206; Laws 2019, LB67, § 5.

(b) COUNTY BOARDS IN COUNTIES UNDER TOWNSHIP ORGANIZATION

23-277 County supervisors; quorum.

A majority of all the supervisors elected in any county shall constitute a quorum for the transaction of business, and all questions which shall arise at meetings shall be determined by the votes of a majority of the supervisors present, except in cases otherwise provided for.

Source: Laws 1879, § 68, p. 373; R.S.1913, § 1069; C.S.1922, § 971; C.S.1929, § 26-285; R.S.1943, § 23-277; Laws 2014, LB937, § 1.

(d) DISCONTINUANCE OF TOWNSHIP ORGANIZATION

23-293 Township organization; discontinuance; procedure.

(1) In counties under township organization, a registered voter may file a petition or petitions for submission of the question of the discontinuance of

township organization to the registered voters of the county. The petition or petitions shall be signed by registered voters equal in number to five percent of the voters registered in the county at the preceding statewide general election. The petition or petitions shall be filed in the office of the election commissioner or county clerk by September 1 of the year of the general election at which the petitioners wish to have the question submitted for a vote. If such petition or petitions are filed in conformance with this subsection, the question shall be submitted to the registered voters at the next general election held after the filing of the petition or petitions.

(2) In counties under township organization, the county board may, by a resolution supported by a majority of the county board, submit the question of discontinuance of township organization to the registered voters of the county. If such resolution is filed in the office of the election commissioner or county clerk by September 1 of the year of the general election at which the board wishes to have the question submitted for a vote, the question shall be submitted to the registered voters at the next general election held after the filing of the resolution.

(3) A petition or county board resolution for discontinuance of township organization shall specify whether the county board of commissioners to be formed pursuant to section 23-151 will have five or seven members and that reorganization as a county board of commissioners will be effective at the expiration of the supervisors' terms of office in January of the third calendar year following the election to discontinue township organization.

Source: Laws 1885, c. 43, § 2, p. 236; Laws 1895, c. 29, § 1, p. 154; R.S.1913, § 1057; C.S.1922, § 959; C.S.1929, § 26-273; R.S. 1943, § 23-293; Laws 1973, LB 75, § 18; Laws 1985, LB 422, § 1; Laws 2008, LB269, § 6; Laws 2019, LB411, § 26.

(e) TERMINATION OF TOWNSHIP BOARD

23-2,100 Termination of township board; public hearing; notice; resolution; termination date; conduct of business; disposal of property; discontinuance of township organization of county.

(1) If a township board has become inactive, the county board of supervisors shall hold a public hearing on the issue of termination of the township board. Notice of the hearing shall be published for two consecutive weeks in a newspaper of general circulation in the county. For purposes of this section, a township board has become inactive when two or more board positions are vacant and the county board has been unable to fill such positions in accordance with sections 32-567 and 32-574 for six or more months.

(2) If no appointment to the township board has been made within thirty days after the public hearing because no resident of the township has provided written notice to the county board that he or she will serve on the township board, the county board may adopt a resolution to terminate the township board. The resolution shall state the effective date of the termination.

(3) Between the date of the public hearing and the date of termination of the township board, the business of the township shall be handled according to this subsection. No tax distributions shall be made to the township. Such funds shall be held by the county board in a separate township fund and disbursed only to pay outstanding obligations of the township board. All claims against the

township board shall be filed with the county clerk and heard by the county board. Upon allowance of a claim, the county board shall direct the county clerk to draw a warrant upon the township fund. The warrant shall be signed by the chairperson of the county board and countersigned by the county clerk.

(4) Upon termination of a township board, the county board shall settle all unfinished business of the township board and shall dispose of all property under ownership of the township. Any proceeds of such sale shall first be disbursed to pay any outstanding obligations of the township, and remaining funds shall be credited to the road fund of the county board. Any remaining township board members serving as of the date of termination shall deposit with the county clerk all township records, papers, and documents pertaining to the affairs of the township and shall certify to the county clerk the amount of outstanding indebtedness in existence on the date of termination. The county board shall levy a tax upon the taxable property located within the boundaries of the township to pay for construction and maintenance of township roads within the township and any outstanding indebtedness not paid for under this subsection. The county board shall have continuing authority to construct and maintain township roads within the township and to perform the functions provided in section 23-224 until such time as the township board is reconstituted by general election that results in the filling of all vacancies on the township board.

(5) If more than fifty percent of the township boards in a county have been terminated, the county board shall file with the election commissioner or county clerk a resolution supporting the discontinuance of the township organization of the county pursuant to subsection (2) of section 23-293.

Source: Laws 2010, LB768, § 1; Laws 2012, LB936, § 1; Laws 2015, LB65, § 1; Laws 2015, LB575, § 4.

ARTICLE 3

PROVISIONS APPLICABLE TO VARIOUS PROJECTS

(c) FLOOD CONTROL

Section

23-316. Levees; dikes; construction; special assessments.

23-317. Levees; dikes; special assessments; entry on tax list; lien.

(i) STREET IMPROVEMENT

23-339. Street improvement; county aid; when authorized.

(c) FLOOD CONTROL

23-316 Levees; dikes; construction; special assessments.

As soon as the contract or contracts are let for the construction of the work as provided in section 23-315, the supervisors or board of county commissioners shall levy a special assessment on all the lands specially benefited in accordance with the benefits received as confirmed and adjudged in a sum as may be necessary to pay for the work and all costs and expenses accrued or to accrue, not exceeding the whole benefit upon any one tract.

Source: Laws 1921, c. 269, § 8, p. 896; C.S.1922, § 1033; C.S.1929, § 26-727; R.S.1943, § 23-316; Laws 2015, LB361, § 47.

23-317 Levees; dikes; special assessments; entry on tax list; lien.

The board of supervisors or county commissioners shall cause the special assessment made upon the lands benefited as provided in section 23-316 to be entered upon the tax lists of the county as provided in cases of special assessments, which assessment shall constitute a lien on the real estate respectively assessed and shall be collected as other special assessments are collected. One-tenth of each assessment shall be collected each year for a period of ten years with interest at the rate of seven percent per annum on deferred payments, unless paid in full as herein provided.

Source: Laws 1921, c. 269, § 9, p. 896; C.S.1922, § 1034; C.S.1929, § 26-728; R.S.1943, § 23-317; Laws 2015, LB361, § 48.

(i) STREET IMPROVEMENT

23-339 Street improvement; county aid; when authorized.

The county board of any county in which any city or cities are located having at least twenty-five thousand inhabitants but fewer 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 is hereby authorized and empowered, whenever the road fund or funds of such county will warrant it, to aid in the grading, paving, or otherwise improving of any street, avenue, or boulevard leading into such city and within the corporate limits thereof, by providing for the payment of not exceeding one-half of the cost of such grading, and not exceeding the cost of the paving of intersections. It shall also be authorized and empowered to grade, pave, or otherwise improve any street, avenue, boulevard, or road, or any portion thereof leading into or adjacent to any such city outside, or partly inside and partly outside the corporate limits thereof, including any portion thereof leading into or across any village or town, and for such improvements outside of the corporate limits of any such city as herein authorized and directed.

Source: Laws 1911, c. 25, § 1, p. 171; R.S.1913, § 1111; C.S.1922, § 1045; C.S.1929, § 26-739; R.S.1943, § 23-339; Laws 2019, LB67, § 6.

ARTICLE 4

COUNTY CIVIL SERVICE COMMISSION ACT

Section

- 23-401. Act, how cited.
- 23-402. Purpose of act.
- 23-403. Terms, defined.
- 23-404. Civil service commission; formation.
- 23-405. Commission; members; qualifications; number; election; vacancy; how filled.
- 23-406. Commission; members; compensation; expenses.
- 23-407. Commission; meetings; notice; rules of procedure, adopt; chairperson.
- 23-408. Commission; powers; duties.
- 23-409. Commission; salary and pay plans for employees; recommend.
- 23-410. Employees; status.
- 23-411. Employee; discharged, suspended, demoted; order filed with commission; copy to employee; appeal.
- 23-412. Employee; discharged, suspended, demoted; appeal; hearing; order; effect.
- 23-413. Commission; subpoena, oaths, production of records; powers.
- 23-414. Employee; no discrimination against because of political, racial, or religious opinions or affiliations; exceptions.
- 23-415. Chief deputy or deputy; removal; effect on salary.

Section

23-416. Human resources director; qualifications; duties; personnel records.

23-417. Commission; appeals; district court; procedure.

23-418. Act, how construed.

23-401 Act, how cited.

Sections 23-401 to 23-418 shall be known and may be cited as the County Civil Service Commission Act.

Source: Laws 2019, LB411, § 1.

23-402 Purpose of act.

The purpose of the County Civil Service Commission Act is to guarantee to all citizens a fair and equal opportunity for employment in the county offices governed by the act and to establish conditions of employment and to promote economy and efficiency in such offices. In addition, the purpose of the act is to establish a system of personnel administration that meets the social, economic, and program needs of county offices. Such system shall provide the means to recruit, select, develop, and maintain an effective and responsive workforce and shall include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, benefits, discipline, discharge, and other related matters. All appointments and promotions under the act shall be made based on merit and fitness.

Source: Laws 1971, LB 921, § 1; R.S.1943, (2012), § 23-2501; Laws 2019, LB411, § 2.

23-403 Terms, defined.

As used in the County Civil Service Commission Act, unless the context otherwise requires:

(1) Employees means all county employees of the county. Employees does not include part-time employees, employees subject to the state personnel service, court-appointed employees, employees of the county attorney's office, employees of the public defender's office, dentists, physicians, practicing attorneys, deputy sheriffs, officers appointed by the Governor, or elected officers or the chief deputy of each office or the deputy of each office if there is not more than one deputy in the office;

(2) Part-time employee means any person whose position is seasonal or temporary as defined by the commission;

(3) Department head means an officer holding an elected office, an officer holding office by appointment of the Governor, the chief deputy of any office or the deputy if there is not more than one deputy, and such other persons holding positions as are declared to be department heads by the county board; and

(4) Commission means the civil service commission formed pursuant to section 23-404.

Source: Laws 1971, LB 921, § 2; Laws 1977, LB 136, § 1; Laws 1989, LB 5, § 5; R.S.1943, (2012), § 23-2502; Laws 2019, LB411, § 3.

23-404 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 the County Civil Service Commission Act. 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; R.S.Supp.,2018, § 23-2503; Laws 2019, LB411, § 4.

23-405 Commission; members; qualifications; number; election; vacancy; how filled.

(1) The commission shall consist of five members who shall be in sympathy with the application of merit principles to public employment. No member of the commission shall be a member of any local, state, or national committee of a political party or an officer or member of a committee in any partisan political club or organization.

(2) The members of the commission shall be as follows: (a) Two elected officers selected from the offices of and elected by the county commissioners, clerk, assessor, treasurer, public defender, register of deeds, clerk of the district court, engineer, and sheriff, being of opposite political parties if possible, and each party shall separately select its own member, (b) two full-time permanent county employees, and (c) one public member holding no public or political office. The initial two such employees shall be selected by the two elected officers referred to in subdivision (a) of this subdivision as follows: Any such employee who is at least twenty-one years of age may submit his or her name as a candidate to the elected officer of the political party with which the employee is registered who shall then select one commission member from such list of names. The four members of the commission shall then select the public member. The commission shall establish employee election procedures which shall provide that all county employees subject to the County Civil Service Commission Act may vote and, if not less than twenty-one years of age, be candidates for a member of the commission. One employee member of the commission shall be a Democrat elected by the Democrat-registered employees subject to the County Civil Service Commission Act and one employee member of the commission shall be a Republican elected by the Republican-registered employees subject to the County Civil Service Commission Act. An employee otherwise eligible to vote and be a candidate for the office of employee member of the commission, but who is not registered as either a Democrat or a Republican, may become eligible to vote, and become a candidate for the office of employee member of the commission by making a declaration that he or she desires to vote for such a member of the commission, or be a candidate for such office, and, in the same declaration, designating the party, Democrat or Republican, with which he or she desires to be affiliated for this purpose. After making such declaration, that employee shall have the same right to vote for a candidate, and be a candidate for the office of employee member of the commission as if the employee were a registered member of the party so designated in the declaration. The manner, form, and contents of such declaration shall be initially established by the two elected officials referred to in subdivision (2)(a) of this section, subject to modification by the commission after it has been fully formed.

(3) The initial term of office of (a) the two elected officers shall be three years from May 21, 1971; (b) the initial term of office of the county employees shall be two years from May 21, 1971; and (c) the initial term of the public member shall be three years from May 21, 1971.

(4) At the expiration of the initial term of office, a successor member shall be elected or appointed as provided in the County Civil Service Commission Act for a term of three years. Membership on the commission of any member shall terminate upon the resignation of any member or at such time as the member no longer complies with the qualifications for election or appointment to the commission. If a member's term terminates prior to the expiration of the term for which the member was elected or appointed, the commission shall appoint a successor complying with the same qualifications for the unexpired term.

Source: Laws 1971, LB 921, § 4; Laws 2018, LB786, § 9; R.S.Supp.,2018, § 23-2504; Laws 2019, LB411, § 5.

23-406 Commission; members; compensation; expenses.

The members of the commission shall not receive compensation for their services but shall be reimbursed for such necessary expenses and mileage as may be incurred in the performance of their duties with reimbursement for mileage to be made at the rate provided in section 81-1176. The county board shall provide sufficient funds in order that such commission may function as set forth in the County Civil Service Commission Act.

Source: Laws 1971, LB 921, § 5; Laws 1981, LB 204, § 31; Laws 1996, LB 1011, § 14; R.S.1943, (2012), § 23-2505; Laws 2019, LB411, § 6.

23-407 Commission; meetings; notice; rules of procedure, adopt; chairperson.

The commission shall hold regular meetings at least once every three months and shall designate the time and place thereof by notice posted in the courthouse at least seven days prior to the meeting. The commission shall adopt rules of procedure and shall keep a record of its proceedings. The commission shall also make provision for special meetings, and all meetings and records of the commission shall be open to the public except as otherwise provided in the County Civil Service Commission Act. The commission shall elect one of its members as chairperson for a period of one year or until a successor has been duly elected and qualified.

Source: Laws 1971, LB 921, § 6; Laws 2018, LB786, § 10; R.S.Supp.,2018, § 23-2506; Laws 2019, LB411, § 7.

23-408 Commission; powers; duties.

(1) The commission may prescribe the following: (a) General employment policies and procedures; (b) regulations for recruiting, examination, and certification of qualified applicants for employment and the maintenance of registers of qualified candidates for employment for all employees governed by the County Civil Service Commission Act; (c) a system of personnel records containing general data on all employees and standards for the development and maintenance of personnel records to be maintained within the offices governed by the act; (d) regulations governing such matters as hours of work, promotions, transfers, demotions, probation, terminations, and reductions in

force; (e) regulations for use by all offices governed by the act relating to such matters as employee benefits, vacation, sick leave, and holidays.

(2) The commission shall require department heads to provide sufficient criteria to enable the commission to properly conduct employment examinations.

(3) The commission shall require department heads to supply to the commission position classification plans, job descriptions, and job specifications.

(4) Individual personnel records shall be available for inspection only by the employee involved, the employee's department head, and such other persons as the commission shall authorize.

(5) The commission shall have such other powers as are necessary to effectuate the purposes of the act.

(6) All acts of the commission pursuant to the authority conferred in this section shall be binding on all county department heads governed by the County Civil Service Commission Act.

Source: Laws 1971, LB 921, § 7; Laws 2018, LB786, § 11; R.S.Supp.,2018, § 23-2507; Laws 2019, LB411, § 8.

23-409 Commission; salary and pay plans for employees; recommend.

The commission may recommend to the county board salary and pay plans for the employees.

Source: Laws 1971, LB 921, § 8; R.S.1943, (2012), § 23-2508; Laws 2019, LB411, § 9.

23-410 Employees; status.

All employees governed by the County Civil Service Commission Act on September 1, 2019, shall retain their employment without the necessity of taking any qualifying examination.

Source: Laws 1971, LB 921, § 9; R.S.1943, (2012), § 23-2509; Laws 2019, LB411, § 10.

23-411 Employee; discharged, suspended, demoted; order filed with commission; copy to employee; appeal.

Any employee may be discharged, suspended, or demoted in rank or compensation by his or her department head by a written order which shall specifically state the reasons therefor. Such order shall be filed with the commission, and a copy of such order shall be served upon the employee personally or by leaving it at his or her usual place of residence. Any employee so affected may, within ten days after service of the order, appeal such order to the commission. Notice of such appeal shall be in writing, signed by the employee appealing, and delivered to any member of the commission. The delivery of the notice of appeal shall be sufficient to perfect an appeal, and no other act shall be deemed necessary to confer jurisdiction of the commission over the appeal. In the event any employee is discharged, suspended, or demoted prior to the formation of the commission, such employee may appeal the order to the commission within

ten days after the formation of the commission in the manner provided in this section.

Source: Laws 1971, LB 921, § 10; Laws 2018, LB786, § 12; R.S.Supp.,2018, § 23-2510; Laws 2019, LB411, § 11.

23-412 Employee; discharged, suspended, demoted; appeal; hearing; order; effect.

The commission shall, within two weeks after receipt of the notice of appeal, hold a public hearing thereon at which the employee shall be entitled to appear personally, be represented by counsel, cross-examine witnesses, and produce evidence. The commission shall have the authority to affirm, modify, or revoke the order appealed from, and the finding and the decision of the commission shall be certified to the department head who issued the order, and the finding and decision of the commission shall be binding on all parties concerned. In the event of an appeal to the commission, no order affecting an employee shall become permanent until the finding and decision of the commission shall be certified as provided in this section. Notwithstanding any other provision of the County Civil Service Commission Act, an employee affected by an order may request transfer to another department governed by the County Civil Service Commission Act with the consent of the commission and the department head of such other department.

Source: Laws 1971, LB 921, § 11; R.S.1943, (2012), § 23-2511; Laws 2019, LB411, § 12.

23-413 Commission; subpoena, oaths, production of records; powers.

To effectively carry out the duties imposed on the commission by the County Civil Service Commission Act, the commission shall have the power to subpoena witnesses, administer oaths, and compel the production of books and papers.

Source: Laws 1971, LB 921, § 12; R.S.1943, (2012), § 23-2512; Laws 2019, LB411, § 13.

23-414 Employee; no discrimination against because of political, racial, or religious opinions or affiliations; exceptions.

No employee or person desiring to be an employee in an office governed by the County Civil Service Commission Act shall be appointed, demoted, discharged, or in any way favored or discriminated against, because of political, racial, or religious opinions or affiliations, but advocating or being a member of a political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence shall be sufficient reason to discharge an employee.

Source: Laws 1971, LB 921, § 13; R.S.1943, (2012), § 23-2513; Laws 2019, LB411, § 14.

23-415 Chief deputy or deputy; removal; effect on salary.

Notwithstanding any other provision of the County Civil Service Commission Act, any person who holds the position of chief deputy, or deputy if there is not more than one deputy in the office, may be removed by the elected officer from the position of chief deputy or deputy without cause, but such person shall, if he

or she has been an employee of the county for more than two years prior to the appointment as chief deputy or deputy, have the right, unless discharged or demoted as provided in sections 23-411 and 43-412, to remain as a county employee at a salary not less than eighty percent of his or her average salary during the three preceding years.

Source: Laws 1971, LB 921, § 14; Laws 2018, LB786, § 13; R.S.Supp.,2018, § 23-2514; Laws 2019, LB411, § 15.

23-416 Human resources director; qualifications; duties; personnel records.

(1) The county board shall appoint a human resources director to help carry out the County Civil Service Commission Act. Such human resources director shall be a person experienced in the field of personnel administration and in known sympathy with the application of merit principles in public employment. The human resources director shall report to the county board. In addition to other duties imposed upon him or her by the county board, the human resources director shall:

- (a) Apply and carry out the act and the rules and regulations thereunder;
- (b) Attend meetings of the commission and act as its secretary and keep minutes of its proceedings;
- (c) Establish and maintain a roster of all employees in the classified service which shall set forth the class title, pay, status, and other pertinent data for each employee;
- (d) Appoint such employees and experts and special assistants as may be necessary;
- (e) Foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employee effectiveness, including, but not limited to, training, safety, health, counseling, and welfare;
- (f) Encourage and exercise leadership in the development of effective personnel administration with the several county agencies, departments, and institutions; and
- (g) Perform such other duties as he or she may consider necessary or desirable to carry out the purposes of the County Civil Service Commission Act.

(2) The human resources director shall require department heads to provide sufficient criteria to enable the commission to properly conduct employment examinations and shall require department heads to supply to the commission position classification plans, job descriptions, and job specifications.

(3) Individual personnel records shall be available for inspection only by the employee involved, the employee's department head, and such other persons as the commission shall authorize.

Source: Laws 2019, LB411, § 16.

23-417 Commission; appeals; district court; procedure.

An appeal from a final order of the commission shall be in the manner provided in sections 25-1901 to 25-1908.

Source: Laws 1971, LB 921, § 15; Laws 1986, LB 595, § 1; R.S.1943, (2012), § 23-2515; Laws 2019, LB411, § 17.

23-418 Act, how construed.

If any provision of the County Civil Service Commission Act or of any rule, regulation, or order thereunder or the application of such provision to any person or circumstances shall be held invalid, the remainder of the County Civil Service Commission Act and the application of such provision of the County Civil Service Commission Act or of such rule, regulation, or order to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

Source: Laws 1971, LB 921, § 16; R.S.1943, (2012), § 23-2516; Laws 2019, LB411, § 18.

ARTICLE 9

BUDGET

(a) APPLICABLE ONLY TO COUNTIES

Section

23-906. Budget-making authority, how constituted; budget, when prepared; contents; notice of hearing.

23-914. Unexpended balances; expenditure; limitation; county board powers.

(a) APPLICABLE ONLY TO COUNTIES

23-906 Budget-making authority, how constituted; budget, when prepared; contents; notice of hearing.

In each county the finance committee of the county board shall constitute the budget-making authority unless the board, in its discretion, designates or appoints one of its own members or the county comptroller, the county manager, or other qualified person as the budget-making authority. If he or she will accept the appointment, another county official may be appointed as the budget-making authority. For the performance of this additional responsibility, the county official accepting the appointment may receive such additional salary as fixed by the county board.

On or before August 1, the budget-making authority shall prepare a county budget document, in the form required by sections 23-904 and 23-905, for the fiscal year and transmit the document to the county board.

A summary of the budget, in the form required by section 23-905, showing for each fund (1) the requirements, (2) the outstanding warrants, (3) the operating reserve to be maintained, (4) the cash on hand at the close of the preceding fiscal year, (5) the revenue from sources other than taxation, (6) the amount to be raised by taxation, and (7) the amount raised by taxation in the preceding fiscal year, together with a notice of a public hearing to be had with respect to the budget before the county board, shall be published once at least four calendar days prior to the date of hearing in some legal newspaper published and of general circulation in the county or, if no such legal newspaper is published, in some legal newspaper of general circulation in the county. For purposes of such notice, the four calendar days shall include the day of publication but not the day of hearing.

Source: Laws 1937, c. 56, § 5, p. 226; Laws 1939, c. 24, § 3, p. 126; C.S.Supp.,1941, § 26-2105; R.S.1943, § 23-906; Laws 1945, c. 45, § 6, p. 215; Laws 1990, LB 874, § 1; Laws 1991, LB 178, § 1; Laws 2002, LB 1018, § 1; Laws 2019, LB212, § 3.

23-914 Unexpended balances; expenditure; limitation; county board powers.

(1) On and after July 1, and until the adoption of the budget by the county board in September, the county board may expend any balance of cash on hand in any fund for the current expenses of the county payable from such fund. Except as provided in subsection (2) of this section, such expenditures shall not exceed an amount equivalent to the total amount expended under the last budget for such fund in the equivalent period of the prior budget year. Such expenditures shall be charged against the appropriation for such fund as provided in the budget when adopted.

(2) The restriction on expenditures in subsection (1) of this section may be exceeded upon the express finding of the county board that expenditures beyond the amount authorized are necessary to enable the county to meet its statutory duties and responsibilities. The finding and approval of the expenditures in excess of the statutory authorization shall be adopted by the county board in open public session of the county board. Expenditures authorized by this subsection shall be charged against appropriations for each individual fund as provided in the budget when adopted, and nothing in this subsection shall be construed to authorize expenditures by the county in excess of that authorized by any other statutory provision.

Source: Laws 1939, c. 24, § 5, p. 130; C.S.Supp., 1941, § 26-2107; R.S. 1943, § 23-914; Laws 1945, c. 45, § 11, p. 217; Laws 1993, LB 734, § 32; Laws 2016, LB784, § 1.

ARTICLE 11**SALARIES OF COUNTY OFFICERS**

Section

- 23-1112. County officers; mileage; rate; county board; powers.
 23-1112.01. County officers; employees; use of automobile; allowance.
 23-1118. Employees of certain counties or municipal counties; retirement benefits; establish; approval of voters; contribution rates; funds; investment; employees, defined; reports.

23-1112 County officers; mileage; rate; county board; powers.

When it is necessary for any county officer or his or her deputy or assistants, except any county sheriff or his or her deputy, to travel on business of the county, he or she shall be allowed mileage at the rate per mile allowed by section 81-1176 for travel by personal automobile upon the presentation of his or her bill for the same accompanied by a proper voucher to the county board of his or her county in like manner as is provided for all other claims against the county, but if travel by rental vehicle or commercial or charter means is economical and practical, then he or she shall be allowed only the actual cost of the rental vehicle or commercial or charter means. The county board may establish different mileage rates based on whether the personal automobile usage is at the convenience of the county or at the convenience of the county officer or his or her deputy or assistant.

Source: Laws 1943, c. 90, § 12, p. 302; R.S. 1943, § 23-1112; Laws 1947, c. 71, § 1, p. 228; Laws 1953, c. 58, § 1, p. 196; Laws 1957, c. 70, § 1, p. 294; Laws 1959, c. 84, § 1, p. 384; Laws 1967, c. 125, § 1, p. 400; Laws 1973, LB 338, § 1; Laws 1974, LB 625, § 1; Laws 1978, LB 691, § 1; Laws 1980, LB 615, § 1; Laws 1981, LB 204,

§ 25; Laws 1985, LB 393, § 16; Laws 1990, LB 893, § 1; Laws 1993, LB 697, § 1; Laws 1996, LB 1011, § 8; Laws 2019, LB609, § 2.

23-1112.01 County officers; employees; use of automobile; allowance.

If a trip or trips included in an expense claim filed by any county officer or employee for mileage are made by personal automobile or otherwise, only one claim shall be allowed pursuant to section 23-1112, regardless of the fact that one or more persons are transported in the motor vehicle. No charge for mileage shall be allowed when such mileage accrues while using any motor vehicle owned by the State of Nebraska or by a county.

Source: Laws 1957, c. 70, § 12, p. 304; Laws 1961, c. 88, § 4, p. 309; Laws 1967, c. 125, § 2, p. 401; Laws 1973, LB 338, § 2; Laws 1974, LB 615, § 2; Laws 1978, LB 691, § 2; Laws 1980, LB 615, § 2; Laws 1981, LB 204, § 26; Laws 1996, LB 1011, § 9; Laws 2019, LB609, § 3.

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.

ARTICLE 12

COUNTY ATTORNEY

Section

- 23-1201. County attorney; duties; services performed at request of Attorney General; additional compensation; reports.
- 23-1215. Council; members; expenses.

23-1201 County attorney; duties; services performed at request of Attorney General; additional compensation; reports.

(1) Except as provided in subdivision (2) of section 84-205 or if a person is participating in a pretrial diversion program established pursuant to sections 29-3601 to 29-3604 or a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07, it shall be the duty of the county attorney, when in possession of sufficient evidence to warrant the belief that a person is guilty and can be convicted of a felony or misdemeanor, to prepare, sign, verify, and file the proper complaint against such person and to appear in the several courts of the county and prosecute the appropriate criminal proceeding on behalf of the state and county. Prior to reaching a plea agreement with defense counsel, the county attorney shall consult with or make a good faith effort to consult with the victim regarding the content of and reasons for such plea agreement. The county attorney shall record such consultation or effort in his or her office file.

(2) It shall be the duty of the county attorney to prosecute or defend, on behalf of the state and county, all suits, applications, or motions, civil or criminal, arising under the laws of the state in which the state or the county is a party or interested. The county attorney may be directed by the Attorney General to represent the state in any action or matter in which the state is interested or a party. When such services require the performance of duties which are in addition to the ordinary duties of the county attorney, he or she shall receive such fee for his or her services, in addition to the salary as county attorney, as (a) the court shall order in any action involving court appearance or (b) the Attorney General shall authorize in other matters, with the amount of such additional fee to be paid by the state. It shall also be the duty of the county attorney to appear and prosecute or defend on behalf of the state and county all such suits, applications, or motions which may have been transferred by change of venue from his or her county to any other county in the state. Any counsel who may have been assisting the county attorney in any such suits, applications, or motions in his or her county may be allowed to assist in any other county to which such cause has been removed. The county attorney shall file the annual inventory statement with the county board of county personal property in his or her possession as provided in sections 23-346 to 23-350. It shall be the further duty of the county attorney of each county, within three days from the calling to his or her attention of any violation of the requirements of the law concerning annual inventory statements from county officers, to institute proceedings against such offending officer and in addition thereto to prosecute the appropriate action to remove such county officer from office. When it is the county attorney who is charged with failure to comply with this section, the Attorney General may bring the action. It shall be the duty of the county attorney to make a report on the tenth day of each quarter to the county board which shall show final disposition of all criminal cases the previous quarter, criminal cases pending on the last day of the previous quarter, and criminal cases appealed during the past quarter. The county board may waive the duty to make such report.

Source: Laws 1885, c. 40, § 2, p. 216; Laws 1899, c. 6, § 1, p. 56; Laws 1905, c. 7, § 1, p. 59; Laws 1911, c. 6, § 1, p. 73; R.S.1913, § 5596; C.S.1922, § 4913; C.S.1929, § 26-901; Laws 1939, c. 28, § 6, p. 146; C.S.Supp.,1941, § 26-901; R.S.1943, § 23-1201; Laws 1957, c. 71, § 1, p. 305; Laws 1959, c. 87, § 1, p. 396; Laws 1959, c. 82, § 2, p. 373; Laws 1961, c. 98, § 1, p. 328; Laws 1979, LB

573, § 1; Laws 1983, LB 78, § 2; Laws 1990, LB 87, § 1; Laws 1997, LB 758, § 1; Laws 2003, LB 43, § 7; Laws 2016, LB807, § 1.

Cross References

Definition of terms, see section 29-119.

23-1215 Council; members; expenses.

Members of the council shall serve without compensation, but they shall be entitled to reimbursement for expenses incident to such service on the council as provided in sections 81-1174 to 81-1177.

Source: Laws 1980, LB 790, § 4; Laws 2020, LB381, § 17.
Operative date January 1, 2021.

**ARTICLE 13
COUNTY CLERK**

Section

- 23-1304. Official bonds; record; duty to keep.
- 23-1311. Instruments; signatures; illegible; refusal to file.

23-1304 Official bonds; record; duty to keep.

The county clerk shall keep a book in which shall be entered in alphabetical order, by name of the principal, a minute of all official bonds filed in the county clerk’s office, giving the name of the office, amount and date of bond, names of sureties, and date of filing, with proper reference to the book and page where the same is recorded.

Source: Laws 1879, § 76, p. 375; R.S.1913, § 5608; C.S.1922, § 4927; C.S.1929, § 26-1004; R.S.1943, § 23-1304; Laws 2018, LB786, § 1.

23-1311 Instruments; signatures; illegible; refusal to file.

The name or names of each signer of an instrument presented for filing or recording in the office of the county clerk or register of deeds, including the name of any notary or official taking the acknowledgment, shall be typewritten or legibly printed beneath such signature. The county clerk or register of deeds may refuse to accept and file any instrument failing to meet the requirements of this section, except that if the county clerk or register of deeds determines that all signatures on the instrument are legible, the county clerk or register of deeds shall not refuse to file the instrument.

Source: Laws 1959, c. 90, § 1, p. 400; Laws 2018, LB786, § 2.

**ARTICLE 14
COUNTY COMPTROLLER IN CERTAIN COUNTIES**

Section

- 23-1402. Treasurer’s account; how kept.
- 23-1403. Record of claims; assistants; appointment; absence or disability; power of deputy.

23-1402 Treasurer’s account; how kept.

The county comptroller shall keep a distinct account with the county treasurer for each several term for which the county treasurer may be elected, in a

book to be provided for that purpose, commencing from the day on which the county treasurer became qualified, and continuing until the same or other person is qualified as county treasurer. In this account, the county comptroller shall charge the county treasurer with the amount of taxes levied and assessed in each year, as the same appears on each tax list, delivered to the county comptroller while in office; with the amount of money and with the amount of state, county, and general fund warrants, road orders, or other evidences of indebtedness, which the county treasurer may have been authorized to receive from the predecessors in the office; with the amount of any additional assessments made after the delivery of any tax list, with the amount of any additional penalty added to the taxes, after the same became delinquent according to law; with the amount due the county for advertising lands for sale for delinquent taxes; with the amount received from the sale of any property, belonging to the county; with the amount received as fines and forfeitures; with the amount received from dram shop, tavern, grocery, and other licenses; and with the amount of money received from any other source authorized by law. Upon presentation of proper vouchers, the county comptroller shall credit the county treasurer with the amount of all county tax which has been paid over to the proper authority and receipted for; with the amount of county warrants received by the county treasurer, and returned to the county board and canceled; with the amount of delinquent taxes and any additional penalty due thereon; with the amount due on lands and lots for advertising the same for sale; with the amount of double and erroneous assessments of property; with the amount of percentage fees allowed by law to the county treasurer for collecting taxes; with the amount of money and the amount of warrants or orders or other evidences of indebtedness which the county treasurer is allowed by law to receive for taxes, which the county treasurer pays over to the successor in the office; and with the amount of taxes uncollected on the tax lists delivered over to the successor in the office.

Source: Laws 1915, c. 181, § 2, p. 369; C.S.1922, § 4938; C.S.1929, § 26-1102; R.S.1943, § 23-1402; Laws 2018, LB786, § 3.

23-1403 Record of claims; assistants; appointment; absence or disability; power of deputy.

The county comptroller shall perform such other duties as may be required by law. The county comptroller shall keep a record of all claims filed against the county, and the claims themselves the county comptroller shall keep on file in the office. The county comptroller is hereby authorized and empowered to appoint the necessary help to be paid by the county, but for whose acts and doings the county comptroller shall be responsible. During the absence or disability to act as the county comptroller, the deputy is hereby authorized to do and perform any and all acts that might by the county comptroller be done and performed if present.

Source: Laws 1915, c. 181, § 3, p. 370; C.S.1922, § 4939; C.S.1929, § 26-1103; R.S.1943, § 23-1403; Laws 2018, LB786, § 4.

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 measure 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 a white background if submitted electronically or 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; Laws 2019, LB186, § 19.

ARTICLE 16

COUNTY TREASURER

Section

- 23-1601. County treasurer; general duties; continuing education; requirements.
23-1602. Warrants; nonpayment for want of funds; endorsement; interest.
23-1603. Violations; penalty.
23-1605. Semiannual statement; publication.
23-1606. Repealed. Laws 2020, LB781, § 12.
23-1607. Repealed. Laws 2020, LB781, § 12.
23-1612. County offices; audit; refusal to exhibit records; penalty.

23-1601 County treasurer; general duties; continuing education; requirements.

(1) It is the duty of the county treasurer to receive all money belonging to the county, from whatsoever source derived and by any method of payment provided by section 77-1702, and all other money which is by law directed to be paid to him or her. All money received by the county treasurer for the use of the county shall be paid out by him or her only on warrants issued by the county board according to law, except when special provision for payment of county money is otherwise made by law.

(2) The county treasurer shall prepare and file the required annual inventory statement of county personal property in his or her custody or possession as provided in sections 23-346 to 23-350.

(3) The county treasurer, at the direction of the city or village, shall invest the bond fund money collected for each city or village located within each county. The bond fund money shall be invested by the county treasurer and any investment income shall accrue to the bond fund. The county treasurer shall notify the city or village when the bonds have been retired.

(4)(a) On or before the fifteenth day of each month, the county treasurer (i) shall pay to each city, village, school district, educational service unit, county agricultural society, and rural or suburban fire protection district located within the county the amount of all funds collected or received for the city, village, school district, educational service unit, county agricultural society, and rural or suburban fire protection district the previous calendar month, including bond fund money when requested by any city of the first class under section 16-731, and (ii) on forms provided by the Auditor of Public Accounts, shall include with the payment a statement indicating the source of all such funds received or collected and an accounting of any expense incurred in the collection of ad valorem taxes, except that the Auditor of Public Accounts shall, upon request of a county, approve the use and reproduction of a county's general ledger or other existing forms if such ledger or other forms clearly indicate the sources of all funds received or collected and an accounting of any expenses incurred in the collection of ad valorem taxes.

(b) If all such funds received or collected are less than twenty-five dollars, the county treasurer may hold such funds until such time as they are equal to or exceed twenty-five dollars. In no case shall such funds be held by the county treasurer longer than six months.

(c) If a school district treasurer has not filed an official bond pursuant to section 11-107 or evidence of equivalent insurance coverage, the county trea-

surer may hold funds collected or received for the school district until such time as the bond or evidence of equivalent insurance coverage has been filed.

(5) Notwithstanding subsection (4) of this section, the county treasurer of any county in which a city of the metropolitan class or a Class V school district is located shall pay to the city of the metropolitan class and to the Class V school district on a weekly basis the amount of all current year funds as they become available for the city or the school district.

(6) The county treasurer shall annually complete continuing education through a program approved by the Auditor of Public Accounts, and proof of completion of such program shall be submitted to the Auditor of Public Accounts.

Source: Laws 1879, § 91, p. 379; R.S.1913, § 5637; C.S.1922, § 4964; C.S.1929, § 26-1301; Laws 1939, c. 28, § 14, p. 153; C.S.Supp.,1941, § 26-1301; R.S.1943, § 23-1601; Laws 1978, LB 847, § 1; Laws 1983, LB 391, § 1; Laws 1995, LB 122, § 1; Laws 1996, LB 604, § 2; Laws 1997, LB 70, § 1; Laws 1997, LB 85, § 1; Laws 1999, LB 287, § 1; Laws 2007, LB334, § 3; Laws 2012, LB823, § 2; Laws 2020, LB781, § 6.
Operative date November 14, 2020.

23-1602 Warrants; nonpayment for want of funds; endorsement; interest.

All warrants issued by the county board shall, upon being presented for payment, if there are not sufficient funds in the treasury to pay the same, be endorsed by the county treasurer not paid for want of funds, and the county treasurer shall also endorse thereon the date of such presentation and sign his or her name thereto. Warrants so endorsed shall draw interest from the date of such endorsement, at the rate to be fixed by the county board at the time of issuance and inserted in the warrant. No account or claim whatsoever against a county, which has been allowed by the county board, shall draw interest until a warrant has been drawn in payment thereof and endorsed as provided in this section.

Source: Laws 1879, § 92, p. 379; R.S.1913, § 5638; C.S.1922, § 4965; C.S.1929, § 26-1302; R.S.1943, § 23-1602; Laws 1947, c. 171, § 1, p. 518; Laws 1969, c. 51, § 87, p. 329; Laws 2018, LB786, § 5.

23-1603 Violations; penalty.

If any county treasurer neglects or refuses to render any account or settlement required by law, fails or neglects to account for any balance due the state, county, township, school district, or any other municipal subdivision, or is guilty of any other misconduct in office, the county board may forthwith remove the county treasurer from office, and appoint some suitable person to perform the duties of the county treasurer until a successor is elected or appointed and qualified.

Source: Laws 1879, § 94, p. 380; R.S.1913, § 5640; C.S.1922, § 4967; C.S.1929, § 26-1304; R.S.1943, § 23-1603; Laws 2018, LB786, § 6.

23-1605 Semiannual statement; publication.

(1)(a) During the months of January and July of each year, the county treasurer shall cause a tabulated statement of the affairs of the county treasurer's office to be published in a legal newspaper published in the county. In counties having more than two hundred fifty thousand inhabitants, the statement shall be published in a daily legal newspaper published in the county.

(b) If no legal newspaper is published in the county, the statement shall be published in a legal newspaper of general circulation within the county.

(c) The county shall pay the newspaper reasonable compensation for the publication of such statement.

(d) The statement shall show the receipts and disbursements of the county treasurer's office for the last preceding six months ending June 30 and December 31, including (i) the amount of money received and for what fund category, (ii) the amount of disbursements and from what fund category, (iii) the ending fund balance in each fund category, (iv) the amount of outstanding warrants or orders registered and unpaid, (v) the total balance, and (vi) the total amount of unpaid claims of the county as of June 30 and December 31 of each year, as certified to the county treasurer by the county clerk.

(2) The county treasurer may also publish the statement on a web site maintained by the county.

(3) If a newspaper cannot publish the statement in a timely manner, publication on a county's web site shall be considered compliance with subsection (1) of this section.

Source: Laws 1883, c. 21, § 1, p. 182; Laws 1901, c. 23, § 1, p. 329; R.S.1913, § 5642; C.S.1922, § 4969; C.S.1929, § 26-1306; R.S. 1943, § 23-1605; Laws 1967, c. 131, § 1, p. 415; Laws 1974, LB 937, § 1; Laws 2018, LB786, § 7; Laws 2020, LB781, § 7. Operative date November 14, 2020.

23-1606 Repealed. Laws 2020, LB781, § 12.

Operative date November 14, 2020.

23-1607 Repealed. Laws 2020, LB781, § 12.

Operative date November 14, 2020.

23-1612 County offices; audit; refusal to exhibit records; penalty.

Every county officer, and the deputy and assistants of every county officer shall, on demand, exhibit to any examiner all books, papers, records, and accounts pertaining to the office and shall truthfully answer all questions asked by such examiner touching the affairs of the office. Any person who fails or refuses to comply with this section shall be guilty of a Class V misdemeanor.

Source: Laws 1893, c. 15, § 5, p. 149; R.S.1913, § 5649; Laws 1919, c. 73, § 4, p. 191; Laws 1919, c. 76, § 4, p. 197; C.S.1922, § 4976; C.S.1929, § 26-1313; R.S.1943, § 23-1612; Laws 1977, LB 40, § 97; Laws 2018, LB786, § 8.

ARTICLE 17

SHERIFF

(a) GENERAL PROVISIONS

Section

23-1701.01. Candidate for sheriff; requirements; sheriff; attend Sheriff's Certification Course; exception; continuing education; violation; penalty.

(b) MERIT SYSTEM

23-1723. Sheriff's office merit commission; county having 400,000 or more population; members; number; appointment; term; vacancy.

23-1723.01. Sheriff's office merit commission; county having 25,000 to 400,000 population; members; number; appointment; term; vacancy.

23-1732. Deputy sheriffs in active employment; examinations; when required.

(a) GENERAL PROVISIONS

23-1701.01 Candidate for sheriff; requirements; sheriff; attend Sheriff's Certification Course; exception; continuing education; violation; penalty.

(1) Any candidate for the office of sheriff who does not have a law enforcement officer certificate or diploma issued by the Nebraska Commission on Law Enforcement and Criminal Justice shall submit with the candidate filing form required by section 32-607 a standardized letter issued by the director of the Nebraska Law Enforcement Training Center certifying that the candidate has:

(a) Within one calendar year prior to the deadline for filing the candidate filing form, passed a background investigation performed by the Nebraska Law Enforcement Training Center based on a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol. The candidate who has not passed a background investigation shall apply for the background investigation at least thirty days prior to the filing deadline for the candidate filing form; and

(b) Received a minimum combined score on the reading comprehension and English language portions of an adult basic education examination designated by the Nebraska Law Enforcement Training Center.

(2) Each sheriff shall attend the Nebraska Law Enforcement Training Center and receive a certificate attesting to satisfactory completion of the Sheriff's Certification Course within eight months after taking office unless such sheriff has already been awarded a certificate by the Nebraska Commission on Law Enforcement and Criminal Justice attesting to satisfactory completion of such course or unless such sheriff can demonstrate to the Nebraska Police Standards Advisory Council that his or her previous training and education is such that he or she will professionally discharge the duties of the office. Any sheriff in office prior to July 19, 1980, shall not be required to obtain a certificate attesting to satisfactory completion of the Sheriff's Certification Course but shall otherwise be subject to this section. Notwithstanding sections 81-1401 to 81-1414.10, each sheriff shall attend twenty hours of continuing education in criminal justice and law enforcement courses and at least two hours of anti-bias and implicit bias training designed to minimize apparent or actual racial profiling approved by the council each year following the first year of such sheriff's term of office. Such continuing education shall be offered through seminars, advanced education which may include college or university classes, conferences, instruction conducted within the sheriff's office, or instruction conducted over the Internet,

except that instruction conducted over the Internet shall be limited to ten hours annually, and shall be of a type which has application to and seeks to maintain and improve the skills of the sheriffs in carrying out the responsibilities of their office.

(3) Notwithstanding section 81-1403, unless a sheriff is able to show good cause for not complying with subsection (2) of this section or obtains a waiver of the training requirements from the council, any sheriff who violates subsection (2) of this section shall be punished by a fine equal to such sheriff's monthly salary. Each month in which such violation occurs shall constitute a separate offense.

Source: Laws 1980, LB 628, § 1; Laws 1994, LB 971, § 2; Laws 2004, LB 75, § 1; Laws 2012, LB817, § 1; Laws 2020, LB924, § 2.
Effective date August 7, 2020.

(b) MERIT SYSTEM

23-1723 Sheriff's office merit commission; county having 400,000 or more population; members; number; appointment; term; vacancy.

The sheriff's office merit commission in counties having a population of four hundred thousand inhabitants or more as determined by the most recent federal decennial census shall consist of five members. One member shall be a duly elected county official, appointed by the county board. One member shall be a deputy sheriff, elected by the deputy sheriffs. Three members shall be selected by the presiding judge of the judicial district encompassing such county and shall be public representatives who are residents of the county. The terms of office of members initially appointed or elected shall expire on January 1 of the first, second, and third years following their appointment or election, as designated by the county board. As the terms of initial members expire, their successors shall be appointed or elected for three-year terms in the same manner as the initial members. The additional public representative provided for in this section shall serve until January 1, 1984, and thereafter his or her successors shall be appointed or elected for three-year terms. Any vacancy shall be filled by appointment or election in the same manner as appointment or election of initial members. The commission shall have the power to declare vacant the position of any member who no longer meets the qualifications for election or appointment set out in this section.

Source: Laws 1969, c. 140, § 3, p. 643; Laws 1972, LB 1093, § 3; Laws 1974, LB 782, § 6; Laws 1977, LB 304, § 1; Laws 1983, LB 81, § 1; Laws 2003, LB 222, § 2; Laws 2016, LB742, § 6.

23-1723.01 Sheriff's office merit commission; county having 25,000 to 400,000 population; members; number; appointment; term; vacancy.

(1) In counties having a population of not less than twenty-five thousand inhabitants and less than four hundred thousand inhabitants as determined by the most recent federal decennial census, the sheriff's office merit commission shall consist of three members, except that the membership of the commission may be increased to five members by unanimous vote of the three-member commission.

(2) If the commission consists of three members, one member shall be a duly elected county official, appointed by the county board, one member shall be a

deputy sheriff, elected by the deputy sheriffs, and one member shall be selected by the presiding judge of the judicial district encompassing such county and shall be a public representative who is a resident of the county and neither an official nor employee of the county. If the commission consists of five members, one member shall be a duly elected county official, appointed by the board of county commissioners, two members shall be deputy sheriffs, elected by the deputy sheriffs, and two members shall be selected by the presiding judge of the judicial district encompassing such county and shall be public representatives who are residents of the county and neither officials nor employees of the county.

(3) The terms of office of members initially appointed or elected after March 20, 1982, shall expire on January 1 of the years 1983, 1984, and 1985, as designated by the county board. Thereafter, the terms of the members of the commission shall be three years, except that in a county with a five-member commission, (a) the initial term of the additional deputy sheriff member shall be staggered so that his or her term shall coincide with the term of such county's deputy sheriff elected before August 31, 2003, and (b) the initial term of the additional public representative member shall be staggered so that his or her term shall coincide with the term of such county's public representative member appointed before August 31, 2003. As the terms of initial members expire, their successors shall be appointed or elected in the same manner as the initial members. Any vacancy shall be filled by appointment or election in the same manner as appointment or election of initial members. The commission shall have the power to declare vacant the position of any member who no longer meets the qualifications for election or appointment set out in this section.

Source: Laws 1977, LB 304, § 2; Laws 1982, LB 782, § 3; Laws 2003, LB 40, § 1; Laws 2003, LB 222, § 3; Laws 2016, LB742, § 7.

23-1732 Deputy sheriffs in active employment; examinations; when required.

(1) All deputy sheriffs in active employment on January 1, 1970, in counties of four hundred thousand inhabitants or more as determined by the most recent federal decennial census and on January 1, 1973, in counties having a population of more than one hundred fifty thousand but less than four hundred thousand inhabitants as determined by the most recent federal decennial census, and who have been such for more than two years immediately prior thereto, shall hold their positions without examinations until discharged, reduced, promoted, or transferred in accordance with sections 23-1721 to 23-1736.

(2) All deputy sheriffs in active employment on January 1, 1975, in counties having a population of more than sixty thousand but not more than one hundred fifty thousand inhabitants, and who have been deputy sheriffs for more than two years immediately prior thereto, or who have been certified by the Nebraska Law Enforcement Training Center and who have received a certificate of completion shall hold their positions without examinations until discharged, reduced, promoted, or transferred in accordance with sections 23-1721 to 23-1736.

(3) All deputy sheriffs in active employment on January 1, 1977, in counties having a population of more than forty thousand but not more than sixty thousand inhabitants, and who have been deputy sheriffs for more than two

years immediately prior thereto, or who have been certified by the Nebraska Law Enforcement Training Center and who have received a certificate of completion shall hold their positions without examinations until discharged, reduced, promoted, or transferred in accordance with sections 23-1721 to 23-1736.

(4) All deputy sheriffs in active employment on January 1, 1982, in counties having a population of twenty-five thousand or more but not more than forty thousand inhabitants, and who have been deputy sheriffs for more than two years immediately prior thereto, or who have been certified by the Nebraska Law Enforcement Training Center, and who have received a certificate of completion shall hold their positions without examinations until discharged, reduced, promoted, or transferred in accordance with sections 23-1721 to 23-1736.

(5) All deputy sheriffs who have been so employed for more than six months and less than two years on such date shall be required to take qualifying examinations, and all such deputy sheriffs who have been so employed for less than six months on such date shall be required to take competitive examinations.

Source: Laws 1969, c. 140, § 12, p. 646; Laws 1972, LB 1093, § 4; Laws 1975, LB 315, § 3; Laws 1977, LB 122, § 3; Laws 1982, LB 782, § 4; Laws 2003, LB 222, § 10; Laws 2016, LB742, § 8.

**ARTICLE 18
CORONER**

Section
23-1821. Death during apprehension or custody; notice required; penalty.

23-1821 Death during apprehension or custody; notice required; penalty.

(1) Every hospital, emergency care facility, physician, nurse, emergency care provider, or law enforcement officer shall immediately notify the county coroner in all cases when it appears that an individual has died while being apprehended by or while in the custody of a law enforcement officer or detention personnel.

(2) Any person who violates this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1988, LB 676, § 1; Laws 1992, LB 1138, § 19; Laws 1997, LB 138, § 33; Laws 2020, LB1002, § 3.
Operative date November 14, 2020.

**ARTICLE 19
COUNTY SURVEYOR AND ENGINEER**

Section
23-1901. County surveyor; county engineer; qualifications; powers and duties.
23-1901.01. County surveyor; residency; appointed from another county; when; term.
23-1901.02. County surveyor; deputy; appointment; oath; duties.
23-1908. Corners; establishment and restoration; rules governing.
23-1911. Surveys; records; contents; available to public.

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.

Cross References

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

Land Surveyors Regulation Act, see section 81-8,108.01.

23-1901.01 County surveyor; residency; appointed from another county; when; term.

(1) A person need not be a resident of the county when he or she files for election as county surveyor, but if elected as county surveyor, such person shall reside in a county for which he or she holds office.

(2) In a county having a population of less than one hundred fifty thousand inhabitants in which the voters have voted against the election of a county surveyor pursuant to section 32-525 or in which no county surveyor has been elected and qualified, the county board of such county shall appoint a competent surveyor either on a full-time or part-time basis from any other county of the State of Nebraska to such office. In making such appointment, the county board shall negotiate a contract with the surveyor, such contract shall specify the responsibility of the appointee to carry out the statutory duties of the office of county surveyor and shall specify the compensation of the surveyor for the performance of such duties, which compensation shall not be subject to section 33-116. A county surveyor appointed under this subsection shall serve the same term as that of an elected surveyor.

(3) A person appointed to the office of county surveyor in any county shall not be required to reside in the county of appointment.

Source: Laws 1951, c. 45, § 1, p. 162; Laws 1979, LB 115, § 1; Laws 1982, LB 127, § 3; Laws 1986, LB 812, § 7; Laws 1996, LB 1085, § 35; Laws 2014, LB946, § 2.

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.

23-1908 Corners; establishment and restoration; rules governing.

The boundaries of the public lands established by the duly appointed government surveyors, when approved by the Surveyor General and accepted by the government, are unchangeable, and the corners established thereon by them shall be held and considered as the true corners which they were intended to represent, and the restoration of lines and corners of such surveys and the division of sections into their legal subdivisions shall be in accordance with the laws of the United States, the circular of instructions of the United States Department of the Interior, Bureau of Land Management, on the restoration of lost and obliterated section corners and quarter corners, and the circular of instructions to the county surveyors by the State Surveyor under authority of the Board of Educational Lands and Funds. The county surveyor is hereby authorized to restore lost and obliterated corners of original surveys and to establish the subdivisional corners of sections in accordance with the provisions of this section and section 23-1907. Any registered land surveyor registered under the Land Surveyors Regulation Act is hereby authorized to establish any corner not monumented in the original government surveys in accordance with the provisions of this section and section 23-1907. Subdivision shall be executed according to the plan indicated by the original field notes and plats of surveys and governed by the original and legally restored corners. The survey of the subdivisional lines of sections in violation of this section shall be absolutely void.

Source: Laws 1913, c. 43, § 6, p. 143; R.S.1913, § 5692; Laws 1915, c. 102, § 1, p. 245; Laws 1917, c. 109, § 1, p. 280; Laws 1921, c. 161, § 1, p. 654; C.S.1922, § 5022; C.S.1929, § 26-1608; R.S. 1943, § 23-1908; Laws 1969, c. 171, § 1, p. 748; Laws 1982, LB 127, § 5; Laws 2015, LB138, § 2.

Cross References

Land Surveyors Regulation Act, see section 81-8,108.01.

23-1911 Surveys; records; contents; available to public.

The county surveyor shall record all surveys, for permanent purposes, made by him or her, as required by sections 81-8,121 to 81-8,122.02. Such record shall set forth the names of the persons making the application for the survey, for whom the work was done, and a statement showing it to be an official county survey or resurvey. The official records, other plats, and field notes of the county surveyor's office shall be deemed and considered public records. Any agent or authority of the United States, the State Surveyor or any deputy state surveyor of Nebraska, or any surveyor registered pursuant to the Land Surveyors Regulation Act shall at all times, within reasonable office or business hours, have free access to the surveys, field notes, maps, charts, records, and other papers as provided for in sections 23-1901 to 23-1913. In all counties, where no regular office is maintained in the county courthouse for the county surveyor of that county, the county clerk shall be custodian of the official record of surveys and all other permanent records pertaining to the office of county surveyor.

Source: Laws 1913, c. 43, § 9, p. 144; R.S.1913, § 5695; C.S.1922; § 5025; C.S.1929, § 26-1611; Laws 1941, c. 44, § 1, p. 227; C.S.Supp.,1941, § 26-1611; R.S.1943, § 23-1911; Laws 1982, LB 127, § 7; Laws 2015, LB138, § 3.

Cross References

Land Surveyors Regulation Act, see section 81-8,108.01.

ARTICLE 23

COUNTY EMPLOYEES RETIREMENT

Section

- 23-2301. Terms, defined.
- 23-2302. Retirement System for Nebraska Counties; establish; purpose; acceptance of contributions.
- 23-2305. Public Employees Retirement Board; duties; rules and regulations.
- 23-2305.01. Board; power to adjust contributions and benefits; overpayment of benefits; investigatory powers; subpoenas.
- 23-2306. Retirement system; members; employees; elected officials; certain contemplated business transactions regarding retirement system participation; procedures; costs; new employee; participation in another governmental plan; how treated; separate employment; effect.
- 23-2306.02. Retirement system; transferred employee; payment to system.
- 23-2306.03. Retirement system; municipal county employee; participation in another governmental plan; how treated.
- 23-2307. Retirement system; members; contribution; amount; county pay.
- 23-2308.01. Cash balance benefit; election; effect; administrative services agreements; authorized.
- 23-2309.01. Defined contribution benefit; employee account; investment options; procedures; administration.
- 23-2310.04. County Employees Defined Contribution Retirement Expense Fund; County Employees Cash Balance Retirement Expense Fund; created; use; investment; forfeiture funds; use.
- 23-2310.05. Defined contribution benefit; employer account; investment options; procedures; administration.
- 23-2315. Retirement system; retirement; when; conditions; application for benefits; deferment of payment; board; duties; certain required minimum distributions; election 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.
- 23-2319. Termination of employment; termination benefit; vesting; certain required minimum distributions; election authorized.
- 23-2319.01. Termination of employment; account forfeited; when; County Employer Retirement Expense Fund; created; use; investment.
- 23-2320. Employee; reemployment; status; how treated; reinstatement; repay amount received.
- 23-2321. Retirement system; member; death before retirement; death benefit; death while performing qualified military service; additional death benefit.
- 23-2322. Retirement system; retirement benefits; exemption from legal process; exception.
- 23-2323.01. Reemployment; military service; contributions; effect.
- 23-2323.02. Direct rollover; terms, defined; distributee; powers; board; powers.
- 23-2323.03. Retirement system; accept payments and rollovers; limitations; board; powers.
- 23-2327. Beneficiary designation; order of priority.
- 23-2331. Act, how cited.
- 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 beginning date means, for purposes of the deferral of distributions, April 1 of the year following the calendar year in which a member has:

(a)(i) Terminated employment with all employers participating in the plan; and

(ii)(A) Attained at least seventy and one-half years of age for a member who attained seventy and one-half years of age on or before December 31, 2019; or

(B) Attained at least seventy-two years of age for a member who attained seventy and one-half years of age on or after January 1, 2020; or

(b)(i) Terminated employment with all employers participating in the plan; and

(ii) Otherwise reached the date specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder;

(29) Required contribution means the deduction to be made from the compensation of employees as provided in the act;

(30) Retirement means qualifying for and accepting the retirement benefit granted under the act after terminating employment;

(31) 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;

(32) Retirement board or board means the Public Employees Retirement Board;

(33) 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;

(34) Retirement system means the Retirement System for Nebraska Counties;

(35) 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;

(36) 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;

(37) 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

(38) 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; Laws 2020, LB1054, § 1.
Effective date July 25, 2020.

Cross References

Spousal Pension Rights Act, see section 42-1101.

23-2302 Retirement System for Nebraska Counties; establish; purpose; acceptance of contributions.

(1) A county employees retirement system shall be established for the purpose of providing a retirement annuity or other benefits for employees as provided by the County Employees Retirement Act. It shall be known as the Retirement System for Nebraska Counties, and by such name shall transact all business and hold all cash and other property as provided in the County Employees Retirement Act.

(2) The retirement system shall not accept as contributions any money from members or participating counties except the following:

(a) Mandatory contributions and fees established by sections 23-2307 and 23-2308;

(b) Payments on behalf of transferred employees made pursuant to section 23-2306.02 or 23-2306.03;

(c) Money that is a repayment of refunded contributions made pursuant to section 23-2320;

(d) Contributions for military service credit made pursuant to section 23-2323.01;

(e) Actuarially required contributions pursuant to subdivision (4)(b) of section 23-2317;

(f) Trustee-to-trustee transfers pursuant to section 23-2323.04;

- (g) Corrections ordered by the board pursuant to section 23-2305.01; or
- (h) Payments made pursuant to subsection (4) of section 23-2306.

Source: Laws 1965, c. 94, § 2, p. 403; Laws 1985, LB 347, § 2; Laws 1985, LB 432, § 2; Laws 2003, LB 451, § 3; Laws 2011, LB509, § 3; Laws 2018, LB1005, § 1.

23-2305 Public Employees Retirement Board; duties; rules and regulations.

It shall be the duty of the board to administer the County Employees Retirement Act as provided in section 84-1503. The board may adopt and promulgate rules and regulations to carry out the act.

Source: Laws 1965, c. 94, § 5, p. 404; Laws 1969, c. 172, § 2, p. 752; Laws 1979, LB 416, § 1; Laws 1985, LB 347, § 3; Laws 1991, LB 549, § 2; Laws 1995, LB 369, § 3; Laws 1996, LB 847, § 3; Laws 2018, LB1005, § 2.

23-2305.01 Board; power to adjust contributions and benefits; overpayment of benefits; investigatory powers; subpoenas.

(1)(a) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the statutory provisions of the County Employees Retirement Act, the board shall refund contributions, require additional contributions, adjust benefits, credit dividend amounts, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest or interest credits, whichever is appropriate, thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest or interest credits, whichever is appropriate.

(b) The board shall have the power, through the director of the Nebraska Public Employees Retirement Systems or the director's designee, to make a thorough investigation of any overpayment of a benefit, when in the judgment of the retirement system such investigation is necessary, including, but not limited to, circumstances in which benefit payments are made after the death of a member or beneficiary and the retirement system is not made aware of such member's or beneficiary's death. In connection with any such investigation, the board, through the director or the director's designee, shall have the power to compel the attendance of witnesses and the production of books, papers, records, and documents, whether in hardcopy, electronic form, or otherwise, and issue subpoenas for such purposes. Such subpoenas shall be served in the same manner and have the same effect as subpoenas from district courts.

(2) The board may adopt and promulgate rules and regulations implementing this section, which may include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c) notice provided to all

affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

Source: Laws 1996, LB 1076, § 5; Laws 2002, LB 687, § 4; Laws 2006, LB 1019, § 2; Laws 2015, LB40, § 4; Laws 2018, LB1005, § 3.

23-2306 Retirement system; members; employees; elected officials; certain contemplated business transactions regarding retirement system participation; procedures; costs; new employee; participation in another governmental plan; how treated; separate employment; effect.

(1) The membership of the retirement system shall be composed of all persons who are or were employed by member counties and who maintain an account balance with the retirement system.

(2) The following employees of member counties are authorized to participate in the retirement system: (a) All permanent full-time employees who have attained the age of eighteen years shall begin participation in the retirement system upon employment and full-time elected officials shall begin participation in the retirement system upon taking office, (b) all permanent part-time employees who have attained the age of eighteen years may exercise the option to begin participation in the retirement system within the first thirty days of employment, and (c) all part-time elected officials may exercise the option to begin participation in the retirement system within thirty days after taking office. An employee who exercises the option to begin participation in the retirement system shall remain in the system until termination or retirement, regardless of any change of status as a permanent or temporary employee.

(3) On and after July 1, 2010, no employee of a member county shall be authorized to participate in the retirement system provided for in the County Employees Retirement Act unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

(4)(a) The board may determine that a governmental entity currently participating in the retirement system no longer qualifies, in whole or in part, under section 414(d) of the Internal Revenue Code as a participating employer in a governmental plan.

(b)(i) To aid governmental entities in their business decisionmaking process, any governmental entity currently participating in the retirement system contemplating a business transaction that may result in such entity no longer qualifying, in whole or in part, under section 414(d) of the Internal Revenue Code may notify the board in writing as soon as reasonably practicable, but no later than one hundred eighty days before the transaction is to occur.

(ii) The board when timely notified shall, as soon as is reasonably practicable, obtain from its contracted actuary the cost of any actuarial study necessary to determine the potential funding obligation. The board shall notify the entity of such cost.

(iii) If such entity pays the board's contracted actuary pursuant to subdivision (4)(c)(vi) of this section for any actuarial study necessary to determine the potential funding obligation, the board shall, as soon as reasonably practicable following its receipt of the actuarial study, (A) determine whether the entity's contemplated business transaction will cause the entity to no longer qualify

under section 414(d) of the Internal Revenue Code, (B) determine whether the contemplated business transaction constitutes a plan termination by the entity, (C) determine the potential funding obligation, (D) determine the administrative costs that will be incurred by the board or the Nebraska Public Employees Retirement Systems in connection with the entity's removal from the retirement system, and (E) notify the entity of such determinations.

(iv) Failure to timely notify the board pursuant to subdivision (4)(b)(i) of this section may result in the entity being treated as though the board made a decision pursuant to subdivision (4)(a) of this section.

(c) If the board makes a determination pursuant to subdivision (4)(a) of this section, or if the entity engages in the contemplated business transaction reviewed under subdivision (4)(b) of this section that results in the entity no longer qualifying under section 414(d) of the Internal Revenue Code:

(i) The board shall notify the entity that it no longer qualifies under section 414(d) of the Internal Revenue Code within ten business days after the determination;

(ii) The affected plan members shall be immediately considered fully vested;

(iii) The affected plan members shall become inactive within ninety days after the board's determination;

(iv) The entity shall pay to the County Employees Retirement Fund an amount equal to any funding obligation;

(v) The entity shall pay to the County Employees Cash Balance Retirement Expense Fund an amount equal to any administrative costs incurred by the board or the Nebraska Public Employees Retirement Systems in connection with the entity's removal from the retirement system; and

(vi) The entity shall pay directly to the board's contracted actuary an amount equal to the cost of any actuarial study necessary to aid the board in determining the amount of such funding obligation, if not previously paid.

(d) For purposes of this subsection:

(i) Business transaction means a merger; consolidation; sale of assets, equipment, or facilities; termination of a division, department, section, or subgroup of the entity; or any other business transaction that results in termination of some or all of the entity's workforce; and

(ii) Funding obligation means the financial liability of the retirement system to provide benefits for the affected plan members incurred by the retirement system due to the entity's business transaction calculated using the methodology and assumptions recommended by the board's contracted actuary and approved by the board. The methodology and assumptions used must be structured in a way that ensures the entity is financially liable for all the costs of the entity's business transaction, and the retirement system is not financially liable for any of the cost of the entity's business transaction.

(e) The board may adopt and promulgate rules and regulations to carry out this subsection including, but not limited to, the methods of notifying the board of pending business transactions, the acceptable methods of payment, and the timing of such payment.

(5) Within the first one hundred eighty days of employment, a full-time employee may apply to the board for vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the

Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned. The board may adopt and promulgate rules and regulations governing the assessment and granting of vesting credit.

(6) Any employee who qualifies for membership in the retirement system pursuant to this section may not be disqualified from membership in the retirement system solely because such employee also maintains separate employment which qualifies the employee for membership in another public retirement system, nor may membership in this retirement system disqualify such an employee from membership in another public retirement system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

(7) A full-time or part-time employee of a city, village, or township who becomes a county employee pursuant to a merger of services shall receive vesting credit for his or her years of participation in a Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code, of the city, village, or township.

(8) A full-time or part-time employee of a city, village, fire protection district, or township who becomes a municipal county employee shall receive credit for his or her years of employment with the city, village, fire protection district, or township for purposes of the vesting provisions of this section.

(9) A full-time or part-time employee of the state who becomes a county employee pursuant to transfer of assessment function to a county shall not be deemed to have experienced a termination of employment and shall receive vesting credit for his or her years of participation in the State Employees Retirement System of the State of Nebraska.

(10) Counties shall ensure that employees authorized to participate in the retirement system pursuant to this section shall enroll and make required contributions to the retirement system immediately upon becoming an employee. Information necessary to determine membership in the retirement system shall be provided by the employer.

Source: Laws 1965, c. 94, § 6, p. 405; Laws 1975, LB 32, § 1; Laws 1984, LB 216, § 3; Laws 1985, LB 349, § 1; Laws 1991, LB 549, § 3; Laws 1995, LB 501, § 1; Laws 1996, LB 1076, § 2; Laws 1997, LB 250, § 5; Laws 1997, LB 624, § 2; Laws 1998, LB 1191, § 24; Laws 2000, LB 1192, § 2; Laws 2001, LB 142, § 33; Laws 2002, LB 407, § 2; Laws 2002, LB 687, § 5; Laws 2004, LB 1097, § 3; Laws 2006, LB 366, § 3; Laws 2008, LB1147, § 1; Laws 2009, LB188, § 1; Laws 2010, LB950, § 1; Laws 2011, LB509, § 4; Laws 2013, LB263, § 3; Laws 2015, LB261, § 3; Laws 2018, LB1005, § 4; Laws 2019, LB34, § 1.

23-2306.02 Retirement system; transferred employee; payment to system.

Under such rules and regulations as the retirement board may adopt and promulgate, a full-time or part-time employee of a city, village, or township who becomes a county employee pursuant to a merger of services may pay to the retirement system an amount equal to the sum of all deductions which were made from the employee's compensation, plus earnings, during such period of employment with the city, village, or township. Payment shall be made within

five years after the merger or prior to retirement, whichever comes first, and may be made through direct payment, installment payments, or an irrevocable payroll authorization.

Source: Laws 1997, LB 250, § 6; Laws 2018, LB1005, § 5.

23-2306.03 Retirement system; municipal county employee; participation in another governmental plan; how treated.

Under such rules and regulations as the retirement board may adopt and promulgate, a full-time or part-time employee of a city, village, fire protection district, or township who becomes a municipal county employee shall transfer all of his or her funds in the retirement system of the city, village, fire protection district, or township by paying to the Retirement System for Nebraska Counties from funds held by the retirement system of the city, village, fire protection district, or township an amount equal to one of the following: (1) If the retirement system of the city, village, fire protection district, or township maintains a defined benefit plan, an amount not to exceed the initial benefit transfer value as provided in section 13-2401, leaving no funds attributable to the transferred employee within the retirement system of the city, village, fire protection district, or township; or (2) if the retirement system of the city, village, fire protection district, or township maintains a defined contribution plan, an amount not to exceed the employee and employer accounts of the transferring employee plus earnings during the period of employment with the city, village, fire protection district, or township. The employee shall receive vesting credit for his or her years of service in a governmental plan, as defined in section 414(d) of the Internal Revenue Code, maintained by the city, village, fire protection district, or township. Payment shall be made within five years after employment begins with the receiving entity or prior to retirement, whichever comes first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

Source: Laws 2001, LB 142, § 34; Laws 2006, LB 366, § 4; Laws 2018, LB1005, § 6.

23-2307 Retirement system; members; contribution; amount; county pay.

Each employee who is a member of the retirement system shall pay to the county or have picked up by the county a sum equal to four and one-half percent of his or her compensation for each pay period. The contributions, although designated as employee contributions, shall be paid by the county in lieu of employee contributions. The county shall pick up the employee 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 pursuant to section 414(h)(2) of the Internal Revenue Code in determining federal tax treatment under the code and shall not be included as gross income of the employee until such time as they are distributed or made available. The county shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee. The county shall pick up these contributions by a compensation deduction through a reduction in the cash compensation of the employee. Employee contributions picked up shall be treated for all purposes of the County Employees Retirement Act in the same

manner and to the extent as employee contributions made prior to the date picked up.

Source: Laws 1965, c. 94, § 7, p. 405; Laws 1981, LB 459, § 1; Laws 1984, LB 218, § 1; Laws 1985, LB 347, § 4; Laws 1991, LB 549, § 4; Laws 1992, LB 1057, § 1; Laws 1995, LB 574, § 31; Laws 2001, LB 186, § 1; Laws 2001, LB 408, § 1; Laws 2013, LB263, § 4.

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) 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; Laws 2019, LB34, § 2.

23-2309.01 Defined contribution benefit; employee account; investment options; procedures; administration.

(1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employee account to various investment options.

(a) Prior to January 1, 2021, the investment options shall include, but not be limited to, the following:

(i) An investor select account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy substantially similar to the investment allocations made by the state investment officer for the defined benefit plans under the retirement systems described in subdivision (1)(a) of section 84-1503. Investments shall most likely include domestic and international equities, fixed income investments, and real estate, as well as potentially additional asset classes;

(ii) A stable return account which shall be invested by or under the direction of the state investment officer in a stable value strategy that provides capital preservation and consistent, steady returns;

(iii) An equities account which shall be invested by or under the direction of the state investment officer in equities;

(iv) A balanced account which shall be invested by or under the direction of the state investment officer in equities and fixed income instruments;

(v) An index fund account which shall be invested by or under the direction of the state investment officer in a portfolio of common stocks designed to closely duplicate the total return of the Standard and Poor's division of The McGraw-Hill Companies, Inc., 500 Index;

(vi) A fixed income account which shall be invested by or under the direction of the state investment officer in fixed income instruments;

(vii) A money market account which shall be invested by or under the direction of the state investment officer in short-term fixed income securities; and

(viii) Beginning July 1, 2006, an age-based account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy that changes based upon the age of the member. The board shall develop an account mechanism that changes the investments as the employee nears retirement age. The asset allocation and asset classes utilized in the investments shall move from aggressive, to moderate, and then to conservative as retirement age approaches.

If a member fails to select an option or combination of options prior to January 1, 2021, all of his or her funds shall be placed in the option described in subdivision (a)(ii) of this subsection. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(b) On or after January 1, 2021, the investment options shall include, but not be limited to, the following:

(i) An investor select account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy substantially similar to the investment allocations made by the state investment officer for the defined benefit plans under the retirement systems described in subdivision (1)(a) of section 84-1503. Investments shall most likely include domestic and international equities, fixed income investments, and real estate, as well as potentially additional asset classes;

(ii) A stable return account which shall be invested by or under the direction of the state investment officer in a stable value strategy that provides capital preservation and consistent, steady returns;

(iii) An equities account which shall be invested by or under the direction of the state investment officer in equities;

(iv) A fixed income account which shall be invested by or under the direction of the state investment officer in fixed income instruments; and

(v) A life-cycle fund which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy that adjusts from a position of higher risk to one of lower risk as the member ages.

If the member fails to select an option or combination of options pursuant to this subdivision (b), all of his or her funds shall be placed in the option described in subdivision (b)(v) of this subsection. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Members of the retirement system may allocate their contributions to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member under subdivision (1)(a) of section 23-2321 or his or her beneficiary may transfer any portion of his or her funds among the options, except for restrictions on transfers to or from the stable return account pursuant to rule or regulation. The board may adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board.

(4) In order to carry out this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the county and its participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the county shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employee account.

Source: Laws 1985, LB 347, § 11; Laws 1991, LB 549, § 7; Laws 1994, LB 833, § 3; Laws 1996, LB 847, § 4; Laws 1999, LB 703, § 2; Laws 2000, LB 1200, § 1; Laws 2001, LB 408, § 2; Laws 2002, LB 407, § 4; Laws 2002, LB 687, § 8; Laws 2005, LB 503, § 1; Laws 2008, LB1147, § 2; Laws 2010, LB950, § 3; Laws 2012, LB916, § 7; Laws 2014, LB759, § 16; Laws 2018, LB1005, § 7; Laws 2019, LB32, § 1.

23-2310.04 County Employees Defined Contribution Retirement Expense Fund; County Employees Cash Balance Retirement Expense Fund; created; use; investment; forfeiture funds; use.

(1) The County Employees Defined Contribution Retirement Expense Fund is created. The fund shall be credited with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the County Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 23-2308.01, 23-2309.01, and 23-2310.05. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The County Employees Cash Balance Retirement Expense Fund is created. The fund shall be credited with money forfeited pursuant to section 23-2319.01 and with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the County Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 23-2308.01, 23-2309.01, and 23-2310.05. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3) Forfeiture funds collected from members participating in the defined contribution benefit shall be used to either pay expenses or reduce employer contributions related to the defined contribution benefit. Any unused funds shall be allocated as earnings of and transferred to the accounts of the remaining members within twelve months after receipt of the funds by the board.

Source: Laws 1997, LB 623, § 2; Laws 2000, LB 1200, § 2; Laws 2001, LB 408, § 3; Laws 2003, LB 451, § 5; Laws 2005, LB 364, § 3; Laws 2007, LB328, § 2; Laws 2010, LB950, § 4; Laws 2013, LB263, § 5.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

23-2310.05 Defined contribution benefit; employer account; investment options; procedures; administration.

(1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employer account to various investment options. Such investment options shall be the same as the investment options of the employee account as provided in subsection (1) of section 23-2309.01. If a member fails to select an option or combination of options, all of his or her funds in the employer account shall be placed in the investment option described in subdivision (1)(a)(v) or (1)(b)(v) of section 23-2309.01, whichever option is applicable based on the date of contribution. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Each member of the retirement system may allocate contributions to his or her employer account to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member under subdivision (1)(a) of section 23-2321 or his or her beneficiary may transfer any portion of his or her funds among the options. The board may adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board.

(4) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the county shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employer account.

Source: Laws 1999, LB 687, § 1; Laws 2000, LB 1200, § 3; Laws 2001, LB 408, § 4; Laws 2002, LB 407, § 5; Laws 2002, LB 687, § 10; Laws 2004, LB 1097, § 4; Laws 2005, LB 364, § 4; Laws 2005, LB 503, § 2; Laws 2008, LB1147, § 3; Laws 2010, LB950, § 5; Laws 2012, LB916, § 8; Laws 2018, LB1005, § 8; Laws 2019, LB32, § 2.

23-2315 Retirement system; retirement; when; conditions; application for benefits; deferment of payment; board; duties; certain required minimum distributions; election authorized.

(1) Upon filing an application for benefits with the board, an employee may elect to retire at any time after attaining the age of fifty-five or an employee may retire as a result of disability at any age.

(2) The member shall specify in the application for benefits the manner in which he or she wishes to receive the retirement benefit under the options provided by the County Employees Retirement Act. Payment under the application for benefits shall be made (a) for annuities, no sooner than the annuity start date, and (b) for other distributions, no sooner than the date of final account value.

(3) Payment of any benefit provided under the retirement system shall not be deferred later than the required beginning date.

(4) The board shall make reasonable efforts to locate the member or the member's beneficiary and distribute benefits by the required beginning date. If the board is unable to make such a distribution, the benefit shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any member would otherwise receive under the County Employees Retirement Act.

(5) 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 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, § 15, p. 407; Laws 1975, LB 47, § 2; Laws 1979, LB 391, § 1; Laws 1982, LB 287, § 1; Laws 1986, LB 311, § 5; Laws 1987, LB 60, § 1; Laws 1987, LB 296, § 1; Laws 1994, LB 833, § 7; Laws 1996, LB 1076, § 3; Laws 2003, LB 451, § 6; Laws 2009, LB188, § 3; Laws 2013, LB263, § 6; Laws 2020, LB1054, § 2.
Effective date July 25, 2020.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

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.

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 the member's death before sixty monthly payments have been made, the monthly payments will continue until sixty monthly payments have been made in total pursuant to section 23-2327.

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 the required beginning date. 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 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; Laws 2019, LB34, § 3; Laws 2020, LB1054, § 3. Effective date July 25, 2020.

23-2319 Termination of employment; termination benefit; vesting; certain required minimum distributions; election authorized.

(1) Except as provided in section 42-1107, upon termination of employment, except for retirement or disability, and after filing an application with the board, a member may receive:

(a) If not vested, a termination benefit equal to the amount of his or her employee account or member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than the required beginning date; or

(b) If vested, a termination benefit equal to (i) the amount of his or her member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than the required beginning date or (ii)(A) the amount of his or her employee account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than the required beginning date plus (B) the amount of his or her employer account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than the required beginning date.

(c) The member cash balance account or employer and employee accounts of a terminating member shall be retained by the board, and the termination benefit shall be deferred until a valid application for benefits has been received.

(2) At the option of the terminating member, any lump sum of the employer account or member cash balance account or any annuity payment provided under subsection (1) of this section shall commence as of the first of the month at any time after such member has terminated his or her employment with the county and no later than the required beginning date. Such election by the terminating member shall be made at any time prior to the commencement of the lump-sum or annuity payments.

(3) Members of the retirement system shall be vested after a total of three years of participation in the system as a member pursuant to section 23-2306, including vesting credit. If an employee retires pursuant to section 23-2315, such employee shall be fully vested in the retirement system.

(4) 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 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, § 19, p. 408; Laws 1975, LB 32, § 3; Laws 1975, LB 47, § 4; Laws 1984, LB 216, § 4; Laws 1986, LB 311, § 7; Laws 1987, LB 60, § 3; Laws 1991, LB 549, § 11; Laws 1993, LB 417, § 4; Laws 1994, LB 1306, § 1; Laws 1996, LB 1076, § 4; Laws 1996, LB 1273, § 16; Laws 1997, LB 624, § 4; Laws 1998, LB 1191, § 28; Laws 2002, LB 687, § 13; Laws 2003, LB 451, § 9; Laws 2006, LB 366, § 6; Laws 2009, LB188, § 5; Laws 2013, LB263, § 8; Laws 2020, LB1054, § 4.
Effective date July 25, 2020.

23-2319.01 Termination of employment; account forfeited; when; County Employer Retirement Expense Fund; created; use; investment.

(1) For a member who has terminated employment and is not vested, the balance of the member's employer account or employer cash balance account shall be forfeited. The forfeited account shall be credited to the County Employees Retirement Fund and shall first be used to meet the expense charges incurred by the retirement board in connection with administering the retirement system, which charges shall be credited to the County Employees Defined Contribution Retirement Expense Fund, if the member participated in the defined contribution option, or to the County Employees Cash Balance Retirement Expense Fund, if the member participated in the cash balance option, and the remainder, if any, shall then be used to restore employer accounts or employer cash balance accounts. Except as provided in subsection (3) of section 23-2310.04 and subdivision (4)(c) of section 23-2317, no forfeited amounts shall be applied to increase the benefits any member would otherwise receive under the County Employees Retirement Act.

(2) If a member ceases to be an employee due to the termination of his or her employment by the county and a grievance or other appeal of the termination is filed, transactions involving forfeiture of his or her employer account or employer cash balance account and transactions for payment of benefits under sections 23-2315 and 23-2319 shall be suspended pending the final outcome of the grievance or other appeal.

(3) The County Employer Retirement Expense Fund is created. The fund shall be administered by the Public Employees Retirement Board. Prior to July 1, 2012, the County Employer Retirement Expense Fund shall be used to meet expenses of the retirement system whether such expenses are incurred in administering the member's employer account or in administering the member's employer cash balance account when the funds available in the County Employees Defined Contribution Retirement Expense Fund or County Employ-

ees Cash Balance Retirement Expense Fund make such use reasonably necessary. The County Employer Retirement Expense Fund shall consist of any reduction in a county contribution which would otherwise be required to fund future service retirement benefits or to restore employer accounts or employer cash balance accounts referred to in subsection (1) of this section. On July 1, 2012, or as soon as practicable thereafter, any money in the County Employer Retirement Expense Fund shall be transferred by the State Treasurer to the County Employees Retirement Fund and credited to the cash balance benefit established in section 23-2308.01.

(4) Prior to July 1, 2012, expenses incurred as a result of a county depositing amounts into the County Employer Retirement Expense Fund shall be deducted prior to any additional expenses being allocated. Any remaining amount shall be allocated in accordance with subsection (3) of this section. Any money in the County Employer Retirement Expense Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1997, LB 624, § 5; Laws 2000, LB 1200, § 4; Laws 2002, LB 687, § 14; Laws 2003, LB 451, § 10; Laws 2005, LB 364, § 5; Laws 2007, LB328, § 4; Laws 2011, LB509, § 7; Laws 2012, LB916, § 10; Laws 2013, LB263, § 9; Laws 2019, LB34, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

23-2320 Employee; reemployment; status; how treated; reinstatement; repay amount received.

(1) Prior to January 1, 2020, except as otherwise provided in this section, a member of the retirement system who has a five-year break in service shall upon reemployment be considered a new employee with respect to the County Employees Retirement Act and shall not receive credit for service prior to his or her reemployment date.

(2)(a) A member who ceases to be an employee before becoming eligible for retirement under section 23-2315 and again becomes a permanent full-time or permanent part-time county employee prior to having a five-year break in service shall immediately be reenrolled in the retirement system and resume making contributions. For purposes of vesting employer contributions made prior to and after the reentry into the retirement system under subsection (3) of section 23-2319, years of participation include years of participation prior to such employee's original termination. For a member who is not vested and has received a termination benefit pursuant to section 23-2319, the years of participation prior to such employee's original termination shall be limited in a ratio equal to the amount that the member repays divided by the termination benefit withdrawn pursuant to section 23-2319.

(b) The reemployed member may repay the value of, or a portion of the value of, the termination benefit withdrawn pursuant to section 23-2319. A reemployed member who elects to repay all or a portion of the value of the termination benefit withdrawn pursuant to section 23-2319 shall repay the actual earnings on such value. Repayment of the termination benefit shall commence within three years of reemployment and shall be completed within five years of reemployment or prior to termination of employment, whichever

occurs first, through (i) direct payments to the retirement system, (ii) installment payments made pursuant to a binding irrevocable payroll deduction authorization made by the member, (iii) an eligible rollover distribution as provided under the Internal Revenue Code, or (iv) a direct rollover distribution made in accordance with section 401(a)(31) of the Internal Revenue Code.

(c) The value of the member's forfeited employer account or employer cash balance account, as of the date of forfeiture, shall be restored in a ratio equal to the amount of the benefit that the member has repaid divided by the termination benefit received. The employer account or employer cash balance account shall be restored first out of the current forfeiture amounts and then by additional employer contributions.

(3) For a member who retired pursuant to section 23-2315 and becomes a permanent full-time employee or permanent part-time employee with a county under the County Employees Retirement Act more than one hundred twenty days after his or her retirement date, the member shall continue receiving retirement benefits. Such a retired member or a retired member who received a lump-sum distribution of his or her benefit shall be considered a new employee as of the date of reemployment and shall not receive credit for any service prior to the member's retirement for purposes of the act.

(4) A member who is reinstated as an employee pursuant to a grievance or appeal of his or her termination by the county shall be a member upon reemployment and shall not be considered to have a break in service for such period of time that the grievance or appeal was pending.

(5) Beginning January 1, 2020, if a contributing member of the retirement system ceases to be an employee and returns to service in any capacity with any county under the County Employees Retirement Act prior to having a one-hundred-twenty-day break in service, the member:

(a) Shall not be deemed to have had a bona fide separation of service;

(b) Shall be immediately reenrolled in:

(i) The defined contribution benefit if the member was contributing to the defined contribution benefit prior to ceasing employment; or

(ii) The cash balance benefit in which the member was participating prior to ceasing employment if the member was contributing to the cash balance benefit prior to ceasing employment;

(c) Shall immediately resume making contributions;

(d) Shall make up any missed contributions based upon services rendered and compensation received;

(e) Shall have all distributions from the retirement system canceled; and

(f) Shall repay the gross distributions from the retirement system.

(6)(a) Beginning January 1, 2020, if a contributing member of the retirement system ceases to be an employee and returns to permanent full-time or permanent part-time service in any capacity with any county under the County Employees Retirement Act after having a one-hundred-twenty-day break in service, the member:

(i) Shall be immediately reenrolled in:

(A) The defined contribution benefit if the member was contributing to the defined contribution benefit prior to ceasing employment; or

(B) The cash balance benefit in which the member was participating prior to ceasing employment if the member was contributing to the cash balance benefit prior to ceasing employment;

(ii) Shall immediately resume making contributions;

(iii) Shall continue receiving any annuity elected after the member ceased employment and before the member was reemployed; and

(iv) Shall be prohibited from taking any distributions from the retirement system until the employee again terminates employment with any and all counties under the County Employees Retirement Act.

(b) For the purposes of vesting employer contributions made prior to and after reentry into the retirement system, the member's years of participation prior to the date the member originally ceased employment and the years of participation after the member is reenrolled in the retirement system shall be included as years of participation, except that if the member is not vested on the date the member originally ceased employment and has taken a distribution, the years of participation prior to the date the member originally ceased employment shall be limited in a ratio equal to the value of the distribution that the member repays divided by the total value of the distribution taken as described in subdivision (6)(c) of this section.

(c) A reemployed member may repay all or a portion of the value of a distribution except for an annuity elected after the member ceased employment and before the member was reemployed. Repayment of such a distribution shall commence within three years after reemployment and shall be completed within five years after reemployment or prior to the member again ceasing employment, whichever occurs first, through (i) direct payments to the retirement system, (ii) installment payments made pursuant to a binding irrevocable payroll deduction authorization made by the member, (iii) an eligible rollover distribution as provided under the Internal Revenue Code, or (iv) a direct rollover distribution made in accordance with section 401(a)(31) of the Internal Revenue Code. If the member fails to repay all of the value of such a distribution prior to the member again ceasing employment, the member shall be forever barred from repaying the value of such a distribution taken between the periods of employment. The value of the member's forfeited employer account or employer cash balance account, as of the date of forfeiture, shall be restored in a ratio equal to the amount of the distribution repaid by the member divided by the amount of the distribution taken. The employer account or employer cash balance account shall be restored first out of the current forfeiture amounts and then by additional employer contributions.

Source: Laws 1965, c. 94, § 20, p. 409; Laws 1985, LB 347, § 9; Laws 1991, LB 549, § 12; Laws 1993, LB 417, § 5; Laws 1997, LB 624, § 6; Laws 1999, LB 703, § 3; Laws 2002, LB 407, § 6; Laws 2002, LB 687, § 15; Laws 2003, LB 451, § 11; Laws 2004, LB 1097, § 5; Laws 2007, LB328, § 6; Laws 2008, LB1147, § 4; Laws 2011, LB509, § 8; Laws 2019, LB34, § 5.

23-2321 Retirement system; member; death before retirement; death benefit; death while performing qualified military service; additional death benefit.

(1)(a) In the event of a member's death before the member's retirement date, the death benefit shall be equal to (i) for participants in the defined contribution benefit, the total of the employee account and the employer account and (ii) for

participants in the cash balance benefit, the benefit provided in section 23-2308.01.

(b) Except as provided in section 42-1107, the death benefit shall be paid pursuant to section 23-2327.

(c) If the beneficiary is not the member's surviving spouse, the death benefit shall be paid as a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death. If the sole primary beneficiary is the member's surviving spouse, the surviving spouse may elect to receive an annuity calculated as if the member retired and selected a one-hundred-percent joint and survivor annuity effective on the annuity purchase date. If the surviving spouse does not elect the annuity option within one hundred eighty days after the death of the member, the surviving spouse shall receive a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death.

(2) A lump-sum death benefit paid to the member's beneficiary, other than the member's estate, that is an eligible distribution may be distributed in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(3) For any member whose death occurs on or after January 1, 2007, while performing qualified military service as defined in section 414(u) of the Internal Revenue Code, the member's beneficiary shall be entitled to any additional death benefit that would have been provided, other than the accrual of any benefit relating to the period of qualified military service. The additional death benefit shall be determined as if the member had returned to employment with a participating county and such employment had terminated on the date of the member's death.

Source: Laws 1965, c. 94, § 21, p. 409; Laws 1975, LB 47, § 5; Laws 1985, LB 347, § 10; Laws 1994, LB 1306, § 2; Laws 1996, LB 1273, § 17; Laws 2002, LB 687, § 16; Laws 2003, LB 451, § 12; Laws 2004, LB 1097, § 6; Laws 2009, LB188, § 6; Laws 2012, LB916, § 11; Laws 2019, LB34, § 6.

23-2322 Retirement system; retirement benefits; exemption from legal process; exception.

Annuities or benefits which any person shall be entitled to receive under the County Employees Retirement Act shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable except to the extent that such annuities or benefits are subject to a qualified domestic relations order under the Spousal Pension Rights Act.

Source: Laws 1965, c. 94, § 22, p. 409; Laws 1985, LB 347, § 12; Laws 1986, LB 311, § 8; Laws 1989, LB 506, § 1; Laws 1996, LB 1273, § 18; Laws 2012, LB916, § 12; Laws 2015, LB40, § 5.

Cross References

Spousal Pension Rights Act, see section 42-1101.

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 may adopt and promulgate, 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; Laws 2018, LB1005, § 9.

23-2323.02 Direct rollover; terms, defined; distributee; powers; board; powers.

(1) For purposes of this section and section 23-2323.03:

(a) Direct rollover means a payment by the retirement system to the eligible retirement plan or plans specified by the distributee;

(b) Distributee means the member, the member's surviving spouse, or the member's former spouse who is an alternate payee under a qualified domestic relations order as defined in section 414(p) of the Internal Revenue Code;

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified plan described in section 401(a) of the code, (iv) an annuity plan described in section 403(a) or 403(b) of the code, (v) except for purposes of section 23-2323.03, an individual retirement plan described in section 408A of the code, and (vi) a plan described in section 457(b) of the code and maintained by a governmental employer. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means subdivisions (1)(c)(i) through (vi) of this section; and

(d) Eligible rollover distribution means any distribution to a distributee of all or any portion of the balance to the credit of the distributee in the plan, except such term shall not include any distribution which is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life of the distributee or joint lives of the distributee and the distributee's beneficiary or for the specified period of ten years or more and shall not

include any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code.

(2) For distributions made to a distributee on or after January 1, 1993, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee.

(3) A member's surviving spouse or former spouse who is an alternate payee under a qualified domestic relations order and, on or after January 1, 2010, any designated beneficiary of a member who is not a surviving spouse or former spouse who is entitled to receive an eligible rollover distribution from the retirement system may, in accordance with such rules, regulations, and limitations as may be established by the board, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(4) An eligible rollover distribution on behalf of a designated beneficiary of a member who is not a surviving spouse or former spouse of the member may be transferred to an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is established for the purpose of receiving the distribution on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity described in section 408(d)(3)(C) of the Internal Revenue Code.

(5) The board may adopt and promulgate rules and regulations for direct rollover procedures which are consistent with section 401(a)(31) of the Internal Revenue Code and which include, but are not limited to, the form and time of direct rollover distributions.

Source: Laws 1996, LB 847, § 8; Laws 2002, LB 407, § 7; Laws 2012, LB916, § 13; Laws 2018, LB1005, § 10.

23-2323.03 Retirement system; accept payments and rollovers; limitations; board; powers.

(1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to section 23-2306.02, 23-2306.03, 23-2320, or 23-2323.01 if the contributions do not exceed the amount authorized to be paid by the member pursuant to section 23-2306.02, 23-2306.03, 23-2320, or 23-2323.01, and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified plan under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified plan under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified plan, individual retirement account, or individual retirement annuity.

(2) Cash transferred to the retirement system as a rollover contribution shall be deposited as other payments made under section 23-2306.02, 23-2306.03, 23-2320, or 23-2323.01.

(3) Under the same conditions as provided in subsection (1) of this section, the retirement system may accept eligible rollover distributions from (a) an

annuity contract described in section 403(b) of the Internal Revenue Code, (b) a plan described in section 457(b) of the code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, or (c) the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the code that is eligible to be rolled over and would otherwise be includable in gross income. Amounts accepted pursuant to this subsection shall be deposited as all other payments under this section.

(4) The retirement system may accept direct rollover distributions made from a qualified plan pursuant to section 401(a)(31) of the Internal Revenue Code. The direct rollover distribution shall be deposited as all other payments under this section.

(5) The board may adopt and promulgate rules and regulations defining procedures for acceptance of rollovers which are consistent with sections 401(a)(31) and 402 of the Internal Revenue Code.

Source: Laws 1996, LB 847, § 9; Laws 1997, LB 250, § 7; Laws 1997, LB 624, § 7; Laws 2001, LB 142, § 35; Laws 2002, LB 407, § 8; Laws 2018, LB1005, § 11.

23-2327 Beneficiary designation; order of priority.

(1) Except as provided in section 42-1107, in the event of a member's death, the death benefit shall be paid to the following, in order of priority:

- (a) To the member's surviving designated beneficiary on file with the board;
- (b) To the spouse married to the member on the member's date of death if there is no surviving designated beneficiary on file with the board; or
- (c) To the member's estate if the member is not married on the member's date of death and there is no surviving designated beneficiary on file with the board.

(2) The priority designations described in subsection (1) of this section shall not apply if the member has retired under a joint and survivor benefit option.

Source: Laws 2019, LB34, § 8.

23-2331 Act, how cited.

Sections 23-2301 to 23-2332.01 shall be known and may be cited as the County Employees Retirement Act.

Source: Laws 1965, c. 94, § 31, p. 411; Laws 1985, LB 347, § 18; Laws 1991, LB 549, § 13; Laws 1994, LB 833, § 8; Laws 1995, LB 501, § 3; Laws 1996, LB 847, § 10; Laws 1996, LB 1076, § 7; Laws 1997, LB 250, § 8; Laws 1997, LB 623, § 6; Laws 1997, LB 624, § 8; Laws 1998, LB 1191, § 33; Laws 1999, LB 687, § 3; Laws 2001, LB 142, § 37; Laws 2001, LB 186, § 2; Laws 2002, LB 407, § 10; Laws 2002, LB 687, § 17; Laws 2019, LB34, § 7.

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.

ARTICLE 25

CIVIL SERVICE SYSTEM

(a) COUNTIES OF MORE THAN 400,000 INHABITANTS

Section

- 23-2501. Transferred to section 23-402.
- 23-2502. Transferred to section 23-403.
- 23-2503. Transferred to section 23-404.
- 23-2504. Transferred to section 23-405.
- 23-2505. Transferred to section 23-406.
- 23-2506. Transferred to section 23-407.
- 23-2507. Transferred to section 23-408.
- 23-2508. Transferred to section 23-409.
- 23-2509. Transferred to section 23-410.
- 23-2510. Transferred to section 23-411.
- 23-2511. Transferred to section 23-412.
- 23-2512. Transferred to section 23-413.
- 23-2513. Transferred to section 23-414.
- 23-2514. Transferred to section 23-415.
- 23-2515. Transferred to section 23-417.
- 23-2516. Transferred to section 23-418.

(b) COUNTIES OF 150,000 TO 400,000 INHABITANTS

- 23-2517. Act, how cited; purpose of act.
- 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.
- 23-2528. Tenure.
- 23-2529. Veterans preference; sections applicable.
- 23-2530. Compliance with act; when.

(a) COUNTIES OF MORE THAN 400,000 INHABITANTS

- 23-2501 Transferred to section 23-402.**
- 23-2502 Transferred to section 23-403.**
- 23-2503 Transferred to section 23-404.**
- 23-2504 Transferred to section 23-405.**
- 23-2505 Transferred to section 23-406.**
- 23-2506 Transferred to section 23-407.**

23-2507 Transferred to section 23-408.

23-2508 Transferred to section 23-409.

23-2509 Transferred to section 23-410.

23-2510 Transferred to section 23-411.

23-2511 Transferred to section 23-412.

23-2512 Transferred to section 23-413.

23-2513 Transferred to section 23-414.

23-2514 Transferred to section 23-415.

23-2515 Transferred to section 23-417.

23-2516 Transferred to section 23-418.

(b) COUNTIES OF 150,000 TO 400,000 INHABITANTS

23-2517 Act, how cited; purpose of act.

(1) Sections 23-2517 to 23-2533 shall be known and may be cited as the County Civil Service Act.

(2) The general purpose of the County Civil Service Act is to establish a system of personnel administration that meets the social, economic, and program needs of county offices. This system shall provide means to recruit, select, develop and maintain an effective and responsive work force, and shall include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, fringe benefits, discharge and other related activities. All appointments and promotions under the County Civil Service Act shall be made based on merit and fitness.

Source: Laws 1974, LB 995, § 1; Laws 2006, LB 808, § 7; Laws 2016, LB742, § 10.

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.

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.

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.

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 employees 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.

23-2528 Tenure.

(1) An employee in the classified service who has completed a probationary period shall have permanent tenure until the employee resigns voluntarily or is

separated in accordance with the rules and regulations governing retirement, dismissal, or layoff.

(2) An employee in the classified service with a probationary, provisional, temporary, or emergency appointment shall have no tenure under that appointment and may be separated from employment by the appointing authority without any right of appeal except as provided in section 23-2531.

Source: Laws 1974, LB 995, § 12; Laws 2018, LB786, § 14.

23-2529 Veterans preference; sections applicable.

Veterans preference shall be given in accordance with sections 48-225 to 48-231.

Source: Laws 1974, LB 995, § 13; Laws 1991, LB 2, § 4; Laws 2014, LB588, § 1.

23-2530 Compliance with act; when.

A board of county commissioners shall comply with the County Civil Service Act within six months after a determination that the population requirement as provided in subdivision (2) of section 23-2518 has been attained as determined by the most recent federal decennial census.

Source: Laws 2016, LB742, § 12.

ARTICLE 31

COUNTY PURCHASING

Section

23-3104. Terms, defined.

23-3108. Purchases; how made.

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.

23-3108 Purchases; how made.

(1) Except as provided in section 23-3109, purchases of personal property or services by the county board or purchasing agent shall be made:

(a) Through the competitive sealed bidding process prescribed in section 23-3111 if the estimated value of the purchase is fifty thousand dollars or more;

(b) By securing and recording at least three informal bids, if practicable, if the estimated value of the purchase is equal to or exceeds ten thousand dollars, but is less than fifty thousand dollars; or

(c) By purchasing in the open market if the estimated value of the purchase is less than ten thousand dollars, subject to section 23-3112. In any county having a population of less than one hundred thousand inhabitants and in which the county board has not appointed a purchasing agent pursuant to section 23-3105, all elected officials are hereby authorized to make purchases with an estimated value less than ten thousand dollars.

(2) In no case shall a purchase made pursuant to subdivision (1)(a), (b), or (c) of this section be divided to produce several purchases which are of an estimated value below that established in the relevant subdivision.

(3) All contracts and leases shall be approved as to form by the county attorney, and a copy of each long-term contract or lease shall be filed with the county clerk.

Source: Laws 1985, LB 393, § 8; Laws 1987, LB 55, § 1; Laws 2003, LB 41, § 3; Laws 2018, LB1098, § 1.

ARTICLE 32

COUNTY ASSESSOR

Section

23-3211. Law enforcement officer or Nebraska National Guard member; residential address; withheld from public; application; form; county assessor and register of deeds; duty.

23-3211 Law enforcement officer or Nebraska National Guard member; 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 or member of the Nebraska National Guard acting pursuant to subdivision (3) of section 55-182 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 applicant's name and address and the parcel identification number for his or her residential address. A law enforcement officer shall

include in the application his or her law enforcement identification number. A member of the Nebraska National Guard shall include in the application proof of his or her status as a member, in a manner prescribed by the county assessor. 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 or member of the Nebraska National Guard who complies with this section for five years after receipt of a complete application. The officer or member may renew his or her application every five years upon submission of an updated application.

Source: Laws 2017, LB624, § 1; Laws 2019, LB152, § 2.

ARTICLE 33

COUNTY SCHOOL ADMINISTRATOR

Section
23-3302. Repealed. Laws 2018, LB377, § 87.

23-3302 Repealed. Laws 2018, LB377, § 87.

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 continuing 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

23-3502. Board of trustees; membership; vacancy; county board serve as board of trustees; terms; removal.

23-3526. Retirement plan; authorized; reports.

23-3527. Retirement system; option to participate in County Employees Retirement Act.

Section

(c) HOSPITAL AUTHORITIES

23-3582. Hospital authority; formation; requirements.

(a) GENERAL PROVISIONS

23-3502 Board of trustees; membership; vacancy; county board serve as board of trustees; terms; removal.

(1) When a county with a population of three thousand six hundred inhabitants or more and less than two hundred thousand inhabitants or with a taxable value of the taxable property of twenty-eight million six hundred thousand dollars or more establishes a facility as provided by section 23-3501, the county board of the county shall appoint a board of trustees.

(2) In counties having a population of two hundred thousand inhabitants or more, the county board of the county having a facility, in lieu of appointing a board of trustees of such facility, may elect to serve as the board of trustees of such facility. If the county board makes such election, the county board shall assume all the duties and responsibilities of the board of trustees of the facility, including those set forth in sections 23-3504 and 23-3505. Such election shall be evidenced by the adoption of a resolution by the county board.

(3)(a) The board of trustees appointed pursuant to this section shall consist of three, five, seven, or nine members as fixed by the county board.

(b) When the board is first established:

(i) If the county provides for a three-member board, one member shall be appointed for a term of two years, one for four years, and one for six years from the date such member is appointed. Thereafter, as the members' terms expire, members shall be appointed for terms of six years;

(ii) If the county board provides for a five-member board, one additional member shall be appointed for four years and one for six years. If the board is changed to a five-member board, the three members who are serving as such trustees at the time of a change from a three-member to a five-member board shall each complete his or her respective term of office. The two additional members shall be appointed by the county board, one for a term of four years and one for a term of six years. Thereafter, as the members' terms expire, members shall be appointed for terms of six years;

(iii) If the county board provides for a seven-member board, one additional member shall be appointed for two years and one for four years. If the board is changed to a seven-member board, the three or five members who are serving as such trustees at the time of the change shall each complete his or her respective term of office. The two or four additional members shall be appointed by the county board. If two additional members are appointed, one shall be appointed for four years and one for six years. If four additional members are appointed, one shall be appointed for two years, two for four years, and one for six years. Thereafter, as the members' terms expire, members shall be appointed for terms of six years; and

(iv) If the county board provides for a nine-member board, one additional member shall be appointed for two years and one for six years. If the board is changed to a nine-member board, the three, five, or seven members who are serving as such trustees at the time of the change shall each complete his or her respective term of office. The two, four, or six additional members shall be

appointed by the county board. If two additional members are appointed, one shall be appointed for two years and one for six years. If four additional members are appointed, two shall be appointed for two years, one for four years, and one for six years. If six additional members are appointed, two shall be appointed for two years, two for four years, and two for six years. Thereafter, as the members' terms expire, members shall be appointed for terms of six years.

(4)(a) All members of the board of trustees shall be residents of the county.

(b) In any county having a population of more than four hundred thousand inhabitants as determined by the most recent federal decennial census, a minimum of one member of the board of trustees shall reside outside the corporate limits of the city in which such facility or facilities are located. In any county having a population of more than four hundred thousand inhabitants as determined by the most recent federal decennial census, if only one member of the board of trustees resides outside the corporate limits of the city in which the facility is located and the residence of the member is annexed by the city, he or she shall be allowed to complete his or her term of office but shall not be eligible for reappointment.

(c) The trustees shall, within ten days after their appointment, qualify by taking the oath of county officers as provided in section 11-101 and by furnishing a bond, if required by the county board, in an amount to be fixed by the county board.

(d) Any person who has been excluded from participation in a federally funded health care program or is included in a federal exclusionary data base shall be ineligible to serve as a trustee.

(5) The board of trustees shall elect a trustee to serve as chairperson, one as secretary, and one as treasurer. The board shall make such elections at each annual board meeting.

(6)(a) When a member is absent from three consecutive board meetings, either regular or special, without being excused by the remaining members of the board, his or her office shall become vacant and a new member shall be appointed by the county board to fill the vacancy for the unexpired term of such member pursuant to subdivision (6)(b) of this section.

(b) Any member of such board may at any time be removed from office by the county board for any reason. Vacancies shall be filled in substantially the same manner as the original appointments are made. The person appointed to fill such a vacancy shall hold office for the unexpired term of the member that he or she has replaced.

(7) The county board shall consult with the existing board of trustees regarding the skills and qualifications of any potential appointees to the board pursuant to this section prior to appointing any new trustee.

Source: Laws 1945, c. 44, § 2, p. 208; Laws 1953, c. 53, § 1, p. 185; Laws 1957, c. 64, § 2, p. 284; Laws 1963, c. 113, § 3, p. 443; Laws 1963, c. 114, § 2, p. 447; Laws 1967, c. 121, § 2, p. 386; Laws 1974, LB 293, § 1; Laws 1977, LB 481, § 1; Laws 1979, LB 187, § 103; Laws 1980, LB 685, § 1; Laws 1981, LB 260, § 1; Laws 1982, LB 703, § 1; Laws 1987, LB 134, § 1; Laws 1991, LB 122, § 1; R.S.Supp., 1991, § 23-343.01; Laws 1992, LB 1063, § 21;

Laws 1992, Second Spec. Sess., LB 1, § 21; Laws 1999, LB 212, § 1; Laws 2002, LB 1062, § 1; Laws 2012, LB995, § 3; Laws 2016, LB742, § 13.

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.

Cross References

County Employees Retirement Act, see section 23-2331.

23-3527 Retirement system; option to participate in County Employees Retirement Act.

A facility established under the provisions of section 23-3501, in a county eligible to participate in the County Employees Retirement Act pursuant to Chapter 23, article 23, shall be given the option to participate in the retirement system under such act so long as the facility elects to participate within the later of one year from July 19, 2018, or one year from the date the facility is established. Failure to timely elect to participate in such retirement system shall bar the facility from electing to participate in the future.

Source: Laws 1977, LB 346, § 2; R.S.1943, (1987), § 23-343.122; Laws 2018, LB1005, § 12.

Cross References

County Employees Retirement Act, see section 23-2331.

(c) HOSPITAL AUTHORITIES

23-3582 Hospital authority; formation; requirements.

(1) Whenever the formation of a hospital authority is desired, a petition or petitions stating (a) the general location of the hospital to be maintained by such proposed authority, (b) the territory to be included within it, which territory shall be contiguous, (c) the approximate number of persons believed to reside within the boundaries of the proposed authority, and (d) the names of five or more, but not exceeding eleven, proposed trustees, who shall be electors residing within the boundaries of the proposed authority, to serve as a board of trustees until their successors are appointed and qualified, should the authority be formed, together with a prayer that the same be declared to be a hospital authority under the Hospital Authorities Act may be filed in the office of the county clerk of the county in which the proposed authority is situated.

(2)(a) Each hospital authority established in a county having a total population of four hundred thousand or more, as shown by the most recent federal decennial census, shall encompass an area in which at least forty thousand persons reside, (b) each hospital authority established in a county having a total population of one hundred fifty thousand to four hundred thousand, as shown by the most recent federal decennial census, shall encompass an area in which at least thirty thousand persons reside, (c) each hospital authority established in a county having a total population of twenty thousand to one hundred fifty thousand, as shown by the most recent federal decennial census, shall encompass an area in which at least twenty thousand persons reside, and (d) no hospital authority shall be established in any county having a total population of less than twenty thousand, as shown by the most recent federal decennial census, unless the hospital authority encompasses the entire county which it is to serve. Such petitions shall be signed by at least one hundred electors who appear to reside within the suggested boundaries of the proposed authority.

Source: Laws 1971, LB 54, § 4; R.S.1943, (1987), § 23-343.77; Laws 1993, LB 815, § 2; Laws 2016, LB742, § 14.

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.

Cross References

Interlocal Cooperation Act, see section 13-801.

ARTICLE 39

COUNTY GUARDIAN AD LITEM DIVISION

Section

23-3901. Guardian ad litem division; created; division director; assistant guardians ad litem.

23-3901 Guardian ad litem division; created; division director; assistant guardians ad litem.

(1) A county board may create a county guardian ad litem division to carry out section 43-272.01.

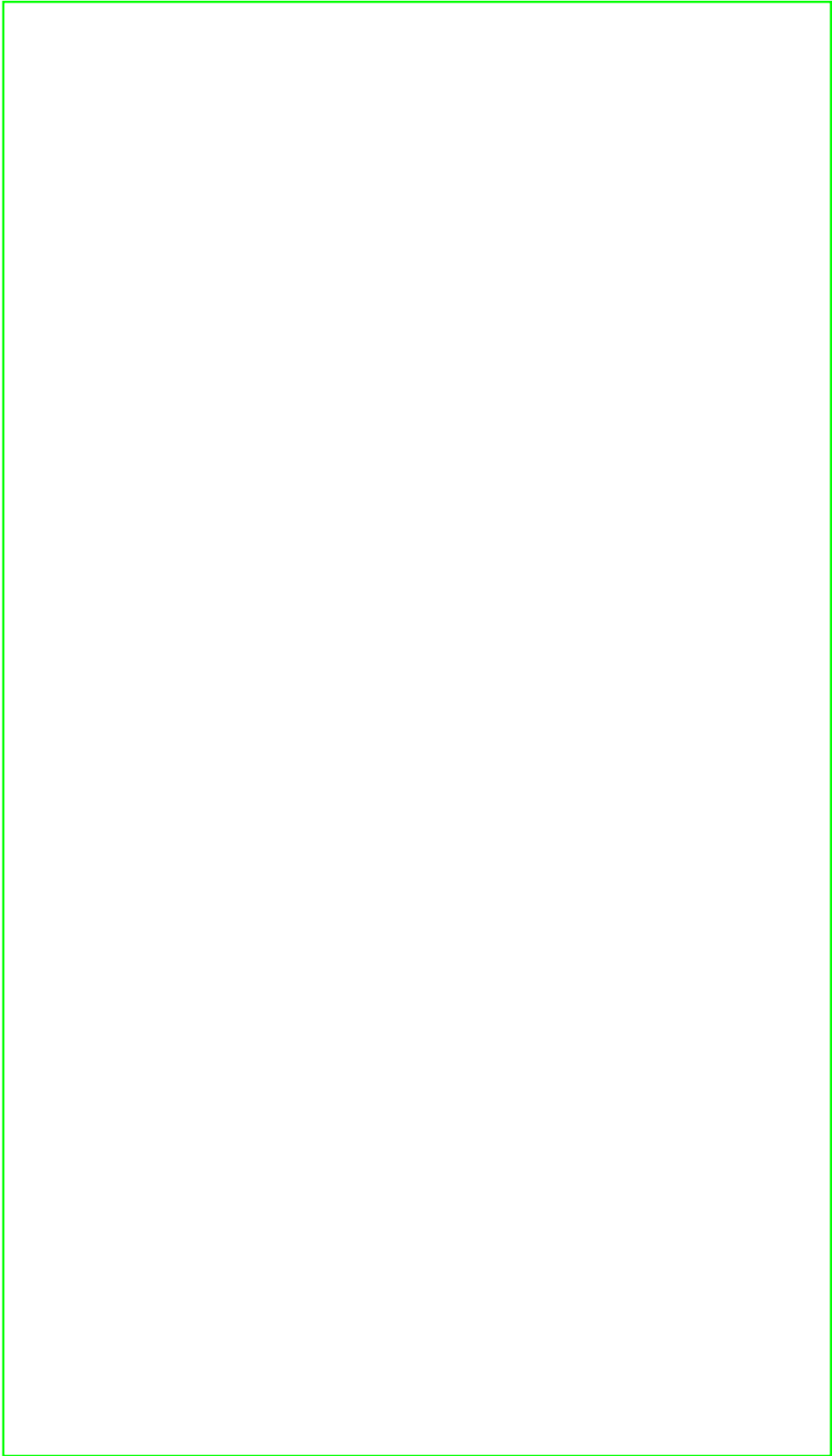
(2) The county board shall appoint a division director for the guardian ad litem division. The division director shall be an attorney admitted to practice law in Nebraska with at least five years of Nebraska juvenile court experience

as a guardian ad litem for children, including both trial and appellate practice experience, prior to appointment. The division director may appoint assistant guardians ad litem and other employees as are reasonably necessary to permit him or her to effectively and competently fulfill the responsibilities of the division, subject to the approval and consent of the county board. All assistant guardians ad litem shall be attorneys admitted to practice law in Nebraska and shall comply with all requirements of the Supreme Court relating to guardians ad litem.

(3) All assistant guardians ad litem employed by the division shall devote their full time to the work of the division and shall not engage in the private practice of law so long as each assistant guardian ad litem receives the same annual salary as each deputy county attorney of comparable ability and experience receives in such counties.

(4) The director and any assistant guardian ad litem employed by the division shall not solicit or accept any fee for representing a child in a case in which the director or the assistant guardian ad litem is already acting as the child's court-appointed guardian ad litem.

Source: Laws 2016, LB894, § 14.



CHAPTER 24 COURTS

Article.

2. Supreme Court.
 - (a) Organization. 24-201.01.
3. District Court.
 - (a) Organization. 24-301.02, 24-303.
 - (c) Clerk. 24-337.
 - (e) Uncalled-for Funds; Disposition. 24-345, 24-348.
5. County Court.
 - (a) Organization. 24-517.
7. Judges, General Provisions.
 - (a) Judges Retirement. 24-701 to 24-710.15.
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 - (d) General Powers. 24-734.
8. Selection and Retention of Judges.
 - (a) Judicial Nominating Commissions. 24-803.
10. Courts, General Provisions. 24-1003 to 24-1005.
11. Court of Appeals. 24-1103 to 24-1106.
12. Judicial Resources Commission. 24-1203.

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 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. On July 1, 2019, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred eighty-one thousand five hundred eighty-eight dollars and thirty-six cents. On July 1, 2020, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred eighty-seven thousand thirty-six dollars and one cent.

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; Laws 2019, LB300, § 1.

**ARTICLE 3
DISTRICT COURT**

(a) ORGANIZATION

Section

- 24-301.02. District court judicial districts; described; number of judges.
- 24-303. Terms of court; when fixed; where held; assignment of judges by Supreme Court; telephonic or videoconference hearing; authorized.

(c) CLERK

- 24-337. Repealed. Laws 2018, LB193, § 97.

(e) UNCALLED-FOR FUNDS; DISPOSITION

- 24-345. Funds uncalled for; payment to State Treasurer; clerk's liability discharged.
- 24-348. Repealed. Laws 2018, LB193, § 97.

(a) ORGANIZATION

24-301.02 District court judicial districts; described; number of judges.

The State of Nebraska shall be divided into the following twelve district court judicial districts:

District No. 1 shall contain the counties of Saline, Jefferson, Gage, Thayer, Johnson, Pawnee, Nemaha, Fillmore, Richardson, and Otoe;

District No. 2 shall contain the counties of Sarpy and Cass;

District No. 3 shall contain the county of Lancaster;

District No. 4 shall contain the county of Douglas;

District No. 5 shall contain the counties of Merrick, Platte, Colfax, Boone, Nance, Hamilton, Polk, York, Butler, Seward, and Saunders;

District No. 6 shall contain the counties of Dixon, Dakota, Cedar, Burt, Thurston, Dodge, and Washington;

District No. 7 shall contain the counties of Knox, Cuming, Antelope, Pierce, Wayne, Madison, and Stanton;

District No. 8 shall contain the counties of Cherry, Keya Paha, Brown, Rock, Blaine, Loup, Custer, Boyd, Holt, Garfield, Wheeler, Valley, Greeley, Sherman, and Howard;

District No. 9 shall contain the counties of Buffalo and Hall;

District No. 10 shall contain the counties of Adams, Phelps, Kearney, Harlan, Franklin, Webster, Clay, and Nuckolls;

District No. 11 shall contain the counties of Hooker, Thomas, Arthur, McPherson, Logan, Keith, Perkins, Lincoln, Dawson, Chase, Hayes, Frontier, Gosper, Dundy, Hitchcock, Red Willow, and Furnas; and

District No. 12 shall contain the counties of Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, Grant, and Deuel.

Until July 1, 2021, in the fourth district there shall be sixteen judges of the district court. Beginning July 1, 2021, in the fourth judicial district there shall be seventeen judges of the district court.

In the third district there shall be eight judges of the district court. In the second, fifth, ninth, eleventh, and twelfth districts there shall be four judges of the district court. In the first and sixth districts there shall be three judges of the district court. In the seventh, eighth, and tenth districts there shall be two judges of the district court.

Source: Laws 1911, c. 5, § 1, p. 70; Laws 1913, c. 203, § 1, p. 623; R.S.1913, § 217; Laws 1915, c. 12, § 1, p. 64; Laws 1917, c. 3, § 1, p. 55; Laws 1919, c. 114, § 1, p. 278; Laws 1921, c. 146, § 1, p. 620; C.S.1922, § 199; Laws 1923, c. 119, § 1, p. 283; C.S.1929, § 5-103; R.S.1943, § 5-105; Laws 1961, c. 11, § 1, p. 99; Laws 1963, c. 24, § 1, p. 125; Laws 1965, c. 23, § 1, p. 186; Laws 1965, c. 24, § 1, p. 189; Laws 1969, c. 27, § 1, p. 229; Laws 1972, LB 1301, § 1; Laws 1975, LB 1, § 1; Laws 1980, LB 618, § 1; Laws 1983, LB 121, § 1; Laws 1985, LB 287, § 1; Laws 1986, LB 516, § 1; R.S.1943, (1987), § 5-105; Laws 1990, LB 822, § 10; Laws 1991, LB 181, § 1; Laws 1992, LB 1059, § 3; Laws 1993, LB 306, § 1; Laws 1995, LB 19, § 1; Laws 1995, LB 189, § 2; Laws 1998, LB 404, § 1; Laws 2001, LB 92, § 1; Laws 2004, LB 1207, § 1; Laws 2007, LB377, § 2; Laws 2009, LB35, § 4; Laws 2018, LB697, § 1; Laws 2019, LB309, § 1.

Cross References

Constitutional provisions, see Article V, sections 10 and 11, Constitution of Nebraska.

24-303 Terms of court; when fixed; where held; assignment of judges by Supreme Court; telephonic or videoconference hearing; authorized.

(1) The judges of the district court shall, the last two months in each year, fix the time of holding terms of court in the counties composing their respective districts during the ensuing year, and cause the same to be published throughout the district, if the same can be done without expense. All jury terms of the district court shall be held at the county seat in the courthouse, or other place provided by the county board, but nothing herein contained shall preclude the district court, or a judge thereof, from rendering a judgment or other final order or from directing the entry thereof in any cause, in any county other than where such cause is pending, where the trial or hearing upon which such judgment or other final order is rendered took place in the county in which such cause is pending. Terms of court may be held at the same time in different counties in the same judicial district, by the judge of the district court thereof, if there be more than one, and upon request of the judge or judges of such court, any term in such district may be held by a judge of the district court of any other district of the state. The Supreme Court may order the assignment of judges of the district court to other districts whenever it shall appear that their services are needed to relieve a congested trial docket or to adjust judicial case loads, or on account of the disqualification, absence, disability, or death of a judge, or for other adequate cause. When necessary, a term of the district court

sitting in any county may be continued into and held during the time fixed for holding such court in any other county within the district, or may be adjourned and held beyond such time.

(2) All nonevidentiary hearings, and any evidentiary hearings approved by the district court and by stipulation of all parties that have filed an appearance, may be heard by the court telephonically or by videoconferencing or similar equipment at any location within the judicial district as ordered by the court and in a manner that ensures the preservation of an accurate record. Such hearings shall not include trials before a jury. Hearings conducted in this manner shall be consistent with the public's access to the courts.

Source: Laws 1879, § 42, p. 91; Laws 1885, c. 45, § 1, p. 242; R.S.1913, § 1162; C.S.1922, § 1085; C.S.1929, § 27-303; Laws 1935, c. 58, § 1, p. 213; C.S.Supp.,1941, § 27-303; R.S.1943, § 24-303; Laws 1955, c. 79, § 1, p. 235; Laws 1961, c. 102, § 1, p. 333; Laws 2008, LB1014, § 1; Laws 2018, LB193, § 4.

(c) CLERK

24-337 Repealed. Laws 2018, LB193, § 97.

(e) UNCALLED-FOR FUNDS; DISPOSITION

24-345 Funds uncalled for; payment to State Treasurer; clerk's liability discharged.

All money, other than witness fees, fines, penalties, forfeitures and license money, that comes into the possession of the clerk of the district court for any county in the State of Nebraska by virtue of his or her office and remains in the custody of the clerk of the district court, uncalled for by the party or parties entitled to the money for a period of three years following the close of litigation in relation to the money, shall be remitted by the clerk of the district court to the State Treasurer on the first Tuesday in January, April, July, or October, respectively, following the expiration of the three-year period, for deposit in the Unclaimed Property Escheat Trust Fund pursuant to section 69-1317. Such payment shall release the bond of the clerk of the district court making such payment from all liability for the money so paid in compliance with this section.

Source: Laws 1933, c. 33, § 1, p. 214; C.S.Supp.,1941, § 27-342; R.S. 1943, § 24-345; Laws 1980, LB 572, § 1; Laws 1992, Third Spec. Sess., LB 26, § 1; Laws 2019, LB406, § 1.

Cross References

Filing of claim to property delivered to state, see section 69-1318.

24-348 Repealed. Laws 2018, LB193, § 97.

**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.

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.
 24-704. Administration of system; Public Employees Retirement Board, Auditor of Public Accounts, and Nebraska Investment Council; duties; employer education program.
 24-704.01. Board; power to adjust contributions and benefits; overpayment of benefits; investigatory powers; subpoenas.
 24-708. Retirement of judge; when; deferment of payment; board; duties.
 24-710. Judges; retirement annuity; amount; how computed; cost-of-living adjustment.
 24-710.01. Judges; alternative contribution rate and retirement benefit; election; notice.
 24-710.04. Reemployment; military service; credit; effect.
 24-710.05. Direct rollover; terms, defined; distributee; powers; board; powers.
 24-710.06. Retirement system; accept payments and rollovers; limitations; board; powers.
 24-710.15. Judges who became members on and after July 1, 2015; cost-of-living payment.

(c) RETIRED JUDGES

- 24-729. Judges; retired; assignment; when; retired judge, defined.

(d) GENERAL POWERS

- 24-734. Judges; powers; enumerated.

(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) Required beginning date means, for purposes of the deferral of distributions, April 1 of the year following the calendar year in which a member has:

(a)(i) Terminated employment with the State of Nebraska; and

(ii)(A) Attained at least seventy and one-half years of age for a member who attained seventy and one-half years of age on or before December 31, 2019; or

(B) Attained at least seventy-two years of age for a member who attained seventy and one-half years of age on or after January 1, 2020; or

(b)(i) Terminated employment with the State of Nebraska; and

(ii) Otherwise reached the date specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder;

(23) 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;

(24) 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;

(25) Retirement system or system means the Nebraska Judges Retirement System as provided in the Judges Retirement Act;

(26) 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

(27) 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; Laws 2020, LB1054, § 5.
Effective date July 25, 2020.

Cross References

Spousal Pension Rights Act, see section 42-1101.

24-704 Administration of system; Public Employees Retirement Board, Auditor of Public Accounts, and Nebraska Investment Council; duties; employer education program.

(1) The general administration of the retirement system for judges provided for in the Judges Retirement Act, except the investment of funds, is hereby vested in the board. The Auditor of Public Accounts shall make an annual audit of the retirement system and electronically file an annual report of its condition with the Clerk of the Legislature. Each member of the Legislature shall receive an electronic copy of the annual report by making a request for such report to the Auditor of Public Accounts. The board may adopt and promulgate rules and regulations as may be necessary to carry out the Judges Retirement Act.

(2)(a) The board shall employ a director and such assistants and employees as may be necessary to efficiently discharge the duties imposed by the act. The director shall keep a record of all acts and proceedings taken by the board.

(b) The director shall keep a complete record of all members with respect to name, current address, age, contributions, length of service, compensation, and any other facts as may be necessary in the administration of the act. The information in the records shall be provided by the State Court Administrator in an accurate and verifiable form, as specified by the director. The director shall, from time to time, carry out testing procedures pursuant to section 84-1512 to verify the accuracy of such information. For the purpose of obtaining such facts and information, the director shall have access to the records of the various state departments and agencies and the holder of the records shall comply with a request by the director for access by providing such facts and information to the director in a timely manner. A certified copy of a birth certificate or delayed birth certificate shall be prima facie evidence of the age of the person named in the certificate.

(c) The director shall develop and implement an employer education program using principles generally accepted by public employee retirement systems so that all employers have the knowledge and information necessary to prepare and file reports as the board requires.

(3) Information necessary to determine membership in the retirement system shall be provided by the State Court Administrator.

(4) Any funds of the retirement system available for investment shall be invested by the Nebraska Investment Council pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Payment for investment services by the council shall be charged directly against the gross investment returns of the funds. Charges so incurred shall not be a part of the board's annual budget request. The amounts of payment for such services, as of December 31 of each year, shall be reported not later than March 31 of the following year to the council, the board, and the Nebraska Retirement Systems

Committee of the Legislature. The report submitted to the committee shall be submitted electronically. The state investment officer shall sell any such securities upon request from the director so as to provide money for the payment of benefits or annuities.

Source: Laws 1955, c. 83, § 4, p. 246; Laws 1971, LB 987, § 6; Laws 1979, LB 322, § 6; Laws 1986, LB 311, § 10; Laws 1991, LB 549, § 17; Laws 1994, LB 833, § 15; Laws 1994, LB 1066, § 18; Laws 1995, LB 369, § 4; Laws 1996, LB 847, § 13; Laws 2000, LB 1192, § 5; Laws 2005, LB 503, § 4; Laws 2012, LB782, § 24; Laws 2018, LB1005, § 13.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

24-704.01 Board; power to adjust contributions and benefits; overpayment of benefits; investigatory powers; subpoenas.

(1)(a) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the Judges Retirement Act, the board shall refund contributions, require additional contributions, adjust benefits, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest.

(b) The board shall have the power, through the director of the Nebraska Public Employees Retirement Systems or the director's designee, to make a thorough investigation of any overpayment of a benefit, when in the judgment of the retirement system such investigation is necessary, including, but not limited to, circumstances in which benefit payments are made after the death of a member or beneficiary and the retirement system is not made aware of such member's or beneficiary's death. In connection with any such investigation, the board, through the director or the director's designee, shall have the power to compel the attendance of witnesses and the production of books, papers, records, and documents, whether in hardcopy, electronic form, or otherwise, and issue subpoenas for such purposes. Such subpoenas shall be served in the same manner and have the same effect as subpoenas from district courts.

(2) The board may adopt and promulgate rules and regulations implementing this section, which shall include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c) notice provided to all affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

Source: Laws 1996, LB 1076, § 10; Laws 2004, LB 1097, § 12; Laws 2015, LB40, § 6; Laws 2018, LB1005, § 14.

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 shall not be deferred later than the required beginning date.

(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. 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; Laws 2020, LB1054, § 6.
Effective date July 25, 2020.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

24-710 Judges; retirement annuity; amount; how computed; cost-of-living adjustment.

(1) The retirement annuity of a judge who is an original member, who has not made the election provided for in subsection (8) of section 24-703 or section 24-710.01, and who retires under section 24-708 or 24-709 shall be computed as follows: Each such judge shall be entitled to receive an annuity, each monthly payment of which shall be in an amount equal to three and one-third percent of his or her final average compensation as such judge, multiplied by the number of his or her years of creditable service. The amount stated in this section shall be supplemental to any benefits received by such judge under the Nebraska and federal old age and survivors' insurance acts at the date of retirement, but the monthly combined benefits received thereunder and by the Judges Retirement Act shall not exceed sixty-five percent of the final average compensation such judge was receiving when he or she last served as such judge. The amount of retirement annuity of a judge who retires under section 24-708 or 24-709 shall not be less than twenty-five dollars per month if he or she has four years or more of service credit.

(2) The retirement annuity of a judge who is a future member and who retires after July 1, 1986, under section 24-708 or 24-709 shall be computed as follows: Each such judge shall be entitled to receive an annuity, each monthly payment of which shall be in an amount equal to three and one-half percent of his or her final average compensation as such judge, multiplied by the number of his or her years of creditable service, except that prior to an actuarial factor adjustment for purposes of calculating an optional form of annuity benefits under subsection (3) of this section, the monthly benefits received under this subsection shall not exceed seventy percent of the final average compensation such judge was receiving when he or she last served as such judge.

(3) Except as provided in section 42-1107, any member may, when filing an application as provided by the retirement system, elect to receive, in lieu of the normal form annuity benefits to which the member or his or her beneficiary may otherwise be entitled under the Judges Retirement Act, an optional form of annuity benefits which the board may by rules and regulations provide, the value of which, determined by accepted actuarial methods and on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file in the office of the director, is equal to the value of the benefit replaced. The board may (a) adopt and promulgate appropriate rules and regulations to establish joint and survivorship annuities, with and without reduction on the death of the first annuitant, and such other forms of annuities as may in its judgment be appropriate and establishing benefits as provided in sections 24-707 and 24-707.01, (b) prescribe appropriate forms for making the election by the members, and (c) provide for the necessary actuarial services to make the required valuations.

(4) A one-time cost-of-living adjustment shall be made for each retired judge and each surviving beneficiary who is receiving a retirement annuity as provided for in this section. The annuity shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1992, except that such increases shall not exceed three percent per year of retirement and the total increase shall not exceed two hundred fifty dollars per month.

Source: Laws 1955, c. 83, § 10, p. 249; Laws 1957, c. 79, § 4, p. 323; Laws 1959, c. 95, § 4, p. 413; Laws 1965, c. 116, § 3, p. 448; Laws 1965, c. 117, § 1, p. 489; Laws 1969, c. 178, § 4, p. 766; Laws 1973, LB 478, § 2; Laws 1974, LB 740, § 1; Laws 1975, LB

49, § 1; Laws 1977, LB 467, § 2; Laws 1977, LB 344, § 5; Laws 1981, LB 459, § 4; Laws 1981, LB 462, § 4; Laws 1986, LB 92, § 5; Laws 1986, LB 311, § 13; Laws 1989, LB 506, § 7; Laws 1991, LB 549, § 18; Laws 1992, LB 672, § 32; Laws 1992, LB 682, § 3; Laws 1994, LB 833, § 22; Laws 1996, LB 1273, § 21; Laws 1997, LB 624, § 15; Laws 2004, LB 1097, § 15; Laws 2011, LB509, § 11; Laws 2018, LB1005, § 15.

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.

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.

24-710.05 Direct rollover; terms, defined; distributee; powers; board; powers.

(1) For purposes of this section and section 24-710.06:

(a) Direct rollover means a payment by the retirement system to the eligible retirement plan or plans specified by the distributee;

(b) Distributee means the member, the member's surviving spouse, or the member's former spouse who is an alternate payee under a qualified domestic relations order as defined in section 414(p) of the Internal Revenue Code;

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified plan described in section 401(a) of the code, (iv) an annuity plan described in section 403(a) or 403(b) of the code, (v) except for purposes of section 24-710.06, an individual retirement plan described in section 408A of the code, and (vi) a plan described in section 457(b) of the code and maintained by a governmental employer. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means subdivisions (1)(c)(i) through (vi) of this section; and

(d) Eligible rollover distribution means any distribution to a distributee of all or any portion of the balance to the credit of the distributee in the plan, except such term shall not include any distribution which is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life of the distributee or joint lives of the distributee and the distributee's beneficiary or for the specified period of ten years or more and shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code.

(2) For distributions made to a distributee on or after January 1, 1993, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee.

(3) A member's surviving spouse or former spouse who is an alternate payee under a qualified domestic relations order and, on or after July 1, 2010, any designated beneficiary of a member who is not a surviving spouse or former

spouse who is entitled to receive an eligible rollover distribution from the retirement system may, in accordance with such rules, regulations, and limitations as may be established by the board, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(4) An eligible rollover distribution on behalf of a designated beneficiary of a member who is not a surviving spouse or former spouse of the member may be transferred to an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is established for the purpose of receiving the distribution on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity described in section 408(d)(3)(C) of the Internal Revenue Code.

(5) The board may adopt and promulgate rules and regulations for direct rollover procedures which are consistent with section 401(a)(31) of the Internal Revenue Code and which include, but are not limited to, the form and time of direct rollover distributions.

Source: Laws 1996, LB 847, § 15; Laws 2002, LB 407, § 14; Laws 2012, LB916, § 17; Laws 2018, LB1005, § 16.

24-710.06 Retirement system; accept payments and rollovers; limitations; board; powers.

(1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to section 24-706 if the contributions do not exceed the amount of payment required for the service credits purchased by the member pursuant to such section and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified plan under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified plan under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified plan, individual retirement account, or individual retirement annuity.

(2) Cash transferred to the retirement system as a rollover contribution shall be deposited as other payments for service credits.

(3) Under the same conditions as provided in subsection (1) of this section, the retirement system may accept eligible rollover distributions from (a) an annuity contract described in section 403(b) of the Internal Revenue Code, (b) a plan described in section 457(b) of the code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, or (c) the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the code that is eligible to be rolled over and would otherwise be includable in gross income. Amounts accepted pursuant to this subsection shall be deposited as all other payments under this section.

(4) The retirement system may accept direct rollover distributions made from a qualified plan pursuant to section 401(a)(31) of the Internal Revenue Code.

The direct rollover distribution shall be deposited as all other payments under this section.

(5) The board may adopt and promulgate rules and regulations defining procedures for acceptance of rollovers which are consistent with sections 401(a)(31) and 402 of the Internal Revenue Code.

Source: Laws 1996, LB 847, § 16; Laws 2002, LB 407, § 15; Laws 2018, LB1005, § 17.

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.

(c) RETIRED JUDGES

24-729 Judges; retired; assignment; when; retired judge, defined.

The Supreme Court of Nebraska is empowered, with the consent of the retired judge, (1) to assign judges of the Supreme Court, Court of Appeals, and district court who are now retired or who may be retired hereafter to (a) sit in any court in the state to relieve congested trial dockets or to prevent the trial docket of such court from becoming congested or (b) sit for the judge of any court who may be incapacitated or absent for any reason whatsoever and (2) to assign any judge of the separate juvenile court, county court, or Nebraska Workers' Compensation Court who is now retired or who may be retired hereafter to (a) sit in any court having the same jurisdiction as one in which any such judge may have previously served to relieve congested trial dockets or

to prevent the trial docket of any such court from becoming congested or (b) sit for the judge of any such court who may be incapacitated or absent for any reason. Any judge who has retired on account of disability may not be so assigned.

For purposes of sections 24-729 to 24-733, retired judge shall include a judge who, before, on, or after March 31, 1993, has retired upon the attainment of age fifty-five and has elected to defer the commencement of his or her retirement annuity to a later date.

Source: Laws 1974, LB 832, § 1; Laws 1976, LB 296, § 1; Laws 1979, LB 240, § 1; Laws 1991, LB 732, § 39; Laws 1993, LB 363, § 2; Laws 2018, LB193, § 5.

(d) GENERAL POWERS

24-734 Judges; powers; enumerated.

(1) A judge of any court established under the laws of the State of Nebraska shall, in any case in which that judge is authorized to act, have power to exercise the powers conferred upon the judge and court, and specifically to:

(a) Upon the stipulation of the parties to an action, hear and determine any matter, including the trial of an equity case or case at law in which a jury has been waived;

(b) Hear and determine pretrial and posttrial matters in civil cases not involving testimony of witnesses by oral examination;

(c) With the consent of the defendant, receive pleas of guilty and pass sentences in criminal cases;

(d) With the consent of the defendant, hear and determine pretrial and posttrial matters in criminal cases;

(e) Hear and determine cases brought by petition in error or appeal not involving testimony of witnesses by oral examination;

(f) Hear and determine any matter in juvenile cases with the consent of the guardian ad litem or attorney for the minor, the other parties to the proceedings, and the attorneys for those parties, if any; and

(g) Without notice, make any order and perform any act which may lawfully be made or performed by him or her ex parte in any action or proceeding which is on file in any district of this state.

(2) A judgment or order made pursuant to this section shall be deemed effective when the judgment is entered in accordance with the provisions of subsection (3) of section 25-1301.

(3) The judge, in his or her discretion, may in any proceeding authorized by the provisions of this section not involving testimony of witnesses by oral examination, use telephonic, videoconferencing, or similar methods to conduct such proceedings. The court may require the parties to make reimbursement for any charges incurred.

(4) In any criminal case, with the consent of the parties, a judge may permit any witness who is to be examined by oral examination to appear by telephonic, videoconferencing, or similar methods, with any costs thereof to be taxed as costs.

(5)(a) Unless an objection under subdivision (5)(c) of this section is sustained, in any civil case, a judge shall, for good cause shown, permit any witness who is to be examined by oral examination to appear by telephonic, videoconferencing, or similar methods.

(b) Unless the court orders otherwise for good cause shown, all costs of testimony taken by telephone, videoconferencing, or similar methods shall be provided and paid by the requesting party and may not be charged to any other party. A court may find that there is good cause to allow the testimony of a witness to be taken by telephonic, videoconferencing or similar methods if:

(i) The witness is otherwise unavailable to appear because of age, infirmity, or illness;

(ii) The personal appearance of the witness cannot be secured by subpoena or other reasonable means;

(iii) A personal appearance would be an undue burden or expense to a party or witness; or

(iv) There are any other circumstances that constitute good cause for allowing the testimony of the witness to be taken by telephonic, videoconferencing, or similar methods.

(c) A party may object to examination by telephonic, videoconferencing, or similar methods under subdivision (5)(a) of this section on grounds of unreliability or unfairness. The objecting party has the burden of proving unreliability or unfairness by a preponderance of the evidence.

(d) Nothing in this section shall prohibit an award of expenses, including attorney fees, pursuant to Neb. Ct. R. of Discovery 6-337.

(6) The enumeration of the powers in subsections (1), (2), (3), (4), and (5) of this section shall not be construed to deny the right of a party to trial by jury in the county in which the action was first filed if such right otherwise exists.

(7) Nothing in this section shall be construed to exempt proceedings under this section from the provisions of the Guidelines for Use by Nebraska Courts in Determining When and Under What Conditions a Hearing Before Such Court May Be Closed in Whole or in Part to the Public, adopted by the Supreme Court of the State of Nebraska September 8, 1980, and any amendments to those provisions.

Source: Laws 1879, § 39, p. 90; Laws 1913, c. 209, § 1, p. 635; R.S.1913, § 1176; Laws 1921, c. 177, § 1, p. 676; C.S.1922, § 1099; C.S. 1929, § 27-317; R.S.1943, § 24-317; Laws 1953, c. 64, § 1, p. 208; Laws 1965, c. 111, § 1, p. 435; R.S.1943, (1979), § 24-317; Laws 1983, LB 272, § 1; Laws 1999, LB 43, § 1; Laws 2013, LB103, § 1; Laws 2020, LB912, § 10.
Effective date November 14, 2020.

ARTICLE 8

SELECTION AND RETENTION OF JUDGES

(a) JUDICIAL NOMINATING COMMISSIONS

Section

24-803. Judicial nominating commission; members; term; appointments by Governor; elections by lawyers.

(a) JUDICIAL NOMINATING COMMISSIONS

24-803 Judicial nominating commission; members; term; appointments by Governor; elections by lawyers.

(1) Except as provided in subsection (3) of this section, as the term of a member of a judicial nominating commission initially appointed or selected expires, the term of office of each successor member shall be for a period of four years. The Governor shall appoint all successor members of each nominating commission who are judges of the Supreme Court and citizen members or alternate citizen members. The Governor shall appoint two alternate citizen members, not of the same political party, to each nominating commission. The term of office of an alternate citizen member of a commission shall be for a period of four years except that the initial appointments shall terminate on December 31, 1999. The lawyers residing in the judicial district or area of the state served by a judicial nominating commission shall select all successor and alternate lawyer members of such commission in the manner prescribed in section 24-806. The term of office of an alternate lawyer member of a commission shall be for a period of four years. No member of any nominating commission, including the Supreme Court member of any such commission, shall serve more than a total of eight consecutive years as a member of the commission, and if such member has served for more than six years as a member of the commission, he or she shall not be eligible for reelection or reappointment. Alternate lawyer and citizen members shall be selected to fill vacancies in their order of election or appointment.

(2) For purposes of this section and Article V, section 21, of the Constitution of Nebraska, a member of a judicial nominating commission shall be deemed to have served on such commission if he or she was a member of the commission at the time of the publication of the notice required by subsection (1) of section 24-810.

(3) Members of the judicial nominating commissions for the office of judge of the district court shall also serve as members of the judicial nominating commissions for the office of judge of the county court for counties located within the district court judicial districts served, except that members of the judicial nominating commissions for district judge and county judge in districts 1, 2, 3, 4, and 10 shall be appointed or selected separately to serve on such commissions.

Source: Laws 1963, c. 124, § 3, p. 472; Laws 1973, LB 110, § 2; Laws 1991, LB 251, § 2; Laws 1992, LB 1059, § 6; Laws 1995, LB 189, § 3; Laws 1995, LB 303, § 2; Laws 2019, LB339, § 1.

ARTICLE 10**COURTS, GENERAL PROVISIONS**

Section

- 24-1003. Evidence; recording and preservation; court reporters; appointment; uniform salary schedules; expenses; payment.
 24-1004. Records and exhibits; preservation; disposition.
 24-1005. Records; preservation duplicate; admissible in evidence; destruction of original record.

24-1003 Evidence; recording and preservation; court reporters; appointment; uniform salary schedules; expenses; payment.

The Supreme Court shall provide by rule for the recording and preservation of evidence in all cases in the district and separate juvenile courts and for the preparation of transcripts and bills of exceptions. Court reporters and other persons employed to perform the duties required by such rules shall be appointed by the judge under whose direction they work. The Supreme Court shall prescribe uniform salary schedules for such employees, based on their experience and training and the methods used by them in recording and preserving evidence and preparing transcripts and bills of exceptions. Salaries and expenses of such employees shall be paid by the State of Nebraska from funds appropriated to the Supreme Court. Such employees shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1974, LB 647, § 1; Laws 1981, LB 204, § 34; R.S.1943, (1985), § 24-342.02; Laws 2020, LB381, § 18.
Operative date January 1, 2021.

24-1004 Records and exhibits; preservation; disposition.

The Supreme Court shall provide by rule for the preservation of all records and of all exhibits offered or received in evidence in the trial of any action. When the records of the district court do not show any unfinished matter pending in the action, a judge of the district court if satisfied they are no longer valuable for any purpose may, upon such notice as the judge may direct, order the destruction, return, or other disposition of such exhibits as the judge deems appropriate when approval is given by the State Records Administrator pursuant to the Records Management Act.

Source: Laws 1957, c. 75, § 1, p. 311; Laws 1969, c. 105, § 4, p. 480; Laws 1974, LB 647, § 3; R.S.1943, (1985), § 24-342.01; Laws 2020, LB1028, § 1.
Effective date November 14, 2020.

Cross References

Records Management Act, see section 84-1220.

24-1005 Records; preservation duplicate; admissible in evidence; destruction of original record.

The clerk of any district court or of any other court of record may maintain any court record as a preservation duplicate in the manner provided in section 84-1208. The original record may be destroyed only with the approval of the State Records Administrator pursuant to the Records Management Act. The reproduction of the preservation duplicate shall be admissible as evidence in any court of record in the State of Nebraska.

Source: Laws 1967, c. 134, § 1, p. 419; Laws 1969, c. 105, § 2, p. 480; Laws 1971, LB 128, § 2; R.S.1943, (1985), § 24-337.02; Laws 2020, LB1028, § 2.
Effective date November 14, 2020.

Cross References

Records Management Act, see section 84-1220.

ARTICLE 11

COURT OF APPEALS

Section

24-1103. Active or retired judges; assignment; expenses.

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.

24-1103 Active or retired judges; assignment; expenses.

(1) The Chief Justice of the Supreme Court may call active judges of the district court to serve on the Court of Appeals in case of incapacity or absence for any reason whatsoever or temporary vacancy in the office of a judge of the Court of Appeals. Any active judge designated to serve on the Court of Appeals shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

(2) The number of retired judges assigned to serve pursuant to subdivision (1) of section 24-729 may not at any one time exceed three, and no panel of the Court of Appeals may contain a majority of retired judges so assigned. Payments to a retired judge shall be made in the manner prescribed in sections 24-730 to 24-733.

Source: Laws 1991, LB 732, § 3; Laws 2020, LB381, § 19.
Operative date January 1, 2021.

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.

ARTICLE 12

JUDICIAL RESOURCES COMMISSION

Section

24-1203. Judicial Resources Commission; expenses.

24-1203 Judicial Resources Commission; expenses.

Members of the Judicial Resources Commission shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1992, LB 1059, § 9; R.S.Supp.,1994, § 24-809.03; Laws 2020, LB381, § 20.

Operative date January 1, 2021.



CHAPTER 25

COURTS; CIVIL PROCEDURE

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ARTICLE 2

COMMENCEMENT AND LIMITATION OF ACTIONS

Section

- 25-213. Tolling of statutes of limitation; when.
- 25-217. Action; commencement; defendant not properly served; effect.
- 25-223. Action on breach of warranty on improvements to real property.
- 25-228. Action by victim of sexual assault of a child; when.
- 25-229. Action against real estate licensee; when.

25-213 Tolling of statutes of limitation; when.

Except as provided in sections 76-288 to 76-298, if a person entitled to bring any action mentioned in Chapter 25, the Political Subdivisions Tort Claims Act, the Nebraska Hospital-Medical Liability Act, the State Contract Claims Act, the State Tort Claims Act, the State Miscellaneous Claims Act, or the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, except for a penalty or forfeiture, for the recovery of the title or possession of lands, tenements, or hereditaments, or for the foreclosure of mortgages thereon, is, at the time the cause of action accrued, within the age of twenty years, a person with a mental disorder, or imprisoned, every such person shall be entitled to bring such action within the respective times limited by Chapter 25 after such disability is removed. For the recovery of the title or possession of lands, tenements, or hereditaments or for the foreclosure of mortgages thereon, every such person shall be entitled to bring such action within twenty years from the accrual thereof but in no case longer than ten years after the termination of such disability. Absence from the state, death, or other disability shall not operate to extend the period within which actions in rem are to be commenced by and against a nonresident or his or her representative.

Source: R.S.1867, Code § 17, p. 396; R.S.1913, § 7576; C.S.1922, § 8519; Laws 1925, c. 64, § 2, p. 221; C.S.1929, § 20-213; R.S.1943, § 25-213; Laws 1947, c. 243, § 12, p. 766; Laws 1972, LB 1049, § 1; Laws 1974, LB 949, § 2; Laws 1984, LB 692, § 2; Laws 1986, LB 1177, § 5; Laws 1988, LB 864, § 5; Laws 2007, LB339, § 1; Laws 2019, LB680, § 10.

Cross References

Nebraska Hospital-Medical Liability Act, see section 44-2855.

Political Subdivisions Tort Claims Act, see section 13-901.

State Contract Claims Act, see section 81-8,302.

State Miscellaneous Claims Act, see section 81-8,294.

State Tort Claims Act, see section 81-8,235.

Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, see section 25-3501.

25-217 Action; commencement; defendant not properly served; effect.

(1) An action is commenced on the day the complaint is filed with the court.

(2) Each defendant in the action must be properly served within one hundred eighty days of the commencement of the action. If the action is stayed or enjoined during the one-hundred-eighty-day period, then any defendant who was not properly served before the action was stayed or enjoined must be properly served within ninety days after the stay or injunction is terminated or modified so as to allow the action to proceed.

(3) If any defendant is not properly served within the time specified by subsection (2) of this section then the action against that defendant is dismissed by operation of law. The dismissal is without prejudice and becomes effective on the day after the time for service expires.

Source: R.S.1867, Code § 19, p. 396; R.S.1913, § 7580; C.S.1922, § 8523; C.S.1929, § 20-217; R.S.1943, § 25-217; Laws 1979, LB 510, § 1; Laws 1986, LB 529, § 21; Laws 2002, LB 876, § 5; Laws 2019, LB308, § 1.

Cross References

For commencement of action, see section 25-501.

25-223 Action on breach of warranty on improvements to real property.

(1) Any action to recover damages based on any alleged breach of warranty on improvements to real property or based on any alleged deficiency in the design, planning, supervision, or observation of construction, or construction of an improvement to real property, except improvements to real property subject to the Nebraska Condominium Act, shall be commenced within four years after any alleged act or omission constituting such breach of warranty or deficiency. If such cause of action is not discovered and could not be reasonably discovered within such four-year period, or within one year preceding the expiration of such four-year period, then the cause of action may be commenced within two years from the date of such discovery or from the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier. In no event may any action be commenced to recover damages for an alleged breach of warranty on improvements to real property or deficiency in the design, planning, supervision, or observation of construction, or construction of an improvement to real property more than ten years beyond the time of the act giving rise to the cause of action.

(2)(a) Any action to recover damages based on any alleged breach of warranty on improvements to real property or based on any alleged deficiency in the design, planning, supervision, or observation of construction, or construction of an improvement to real property that is a condominium or part of a condominium project subject to the Nebraska Condominium Act shall be commenced within two years after any alleged act or omission constituting such breach of warranty or deficiency. If such cause of action is not discovered and could not be reasonably discovered within such two-year period, or within one year preceding the expiration of such two-year period, then the cause of 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. In no event may any action be commenced to recover damages for an alleged breach of warranty on improvements to real property or deficiency in the design, planning, supervision, or observation of construction, or construction of an improvement to real property more than five years beyond the time of the act giving rise to the cause of action.

(b) Any action brought under this section shall also comply with section 76-890.

Source: Laws 1976, LB 495, § 1; Laws 2020, LB808, § 40.
Operative date November 14, 2020.

Cross References

Nebraska Condominium Act, see section 76-825.

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.

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.

Cross References

Nebraska Real Estate License Act, see section 81-885.

**ARTICLE 3
PARTIES**

Section

25-307. Suit by infant, guardian, or next friend; exception; substitution by court.

25-307 Suit by infant, guardian, or next friend; exception; substitution by court.

Except as provided by the Nebraska Probate Code and sections 43-4801 to 43-4812, the action of an infant shall be commenced, maintained, and prosecuted by his or her guardian or next friend. Such actions may be dismissed with or without prejudice by the guardian or next friend only with approval of the court. When the action is commenced by his or her next friend, the court has power to dismiss it, if it is not for the benefit of the infant, or to substitute the guardian of the infant, or any person, as the next friend. Any action taken pursuant to this section shall be binding upon the infant.

Source: R.S.1867, Code § 36, p. 398; R.S.1913, § 7588; C.S.1922, § 8531; C.S.1929, § 20-307; R.S.1943, § 25-307; Laws 1975, LB 480, § 1; Laws 1975, LB 481, § 10; Laws 2006, LB 1115, § 10; Laws 2018, LB714, § 13.

Cross References

Nebraska Probate Code, see section 30-2201.

**ARTICLE 4
COMMENCEMENT OF ACTIONS; VENUE**

(a) GENERAL PROVISIONS

Section

25-410. Transfer of actions; clerk of transferor court; duties; clerk of transferee court; duties; certain support orders; how treated.
 25-412. Change of venue in local actions involving real estate; transfer and entry of judgment.
 25-412.04. Criminal and civil trials; agreements for change of venue; jury; selection.

(a) GENERAL PROVISIONS

25-410 Transfer of actions; clerk of transferor court; duties; clerk of transferee court; duties; certain support orders; how treated.

(1) For the convenience of the parties and witnesses or in the interest of justice, a district court of any county, the transferor court, may transfer any civil action to the district court of any other county in this state, the transferee court. The transfer may occur before or after the entry of judgment, and there shall be no additional fees required for the transfer.

(2) To transfer a civil action, the transferor court shall order transfer of the action to the specific transferee court requested. The clerk of the transferor court shall file with the transferee court within ten days after the entry of the transfer order a certification of the case file and costs. The clerk of the

transferor court shall certify any judgment and payment records of such judgments in the action maintained by the transferor court.

(3) Upon the filing of such documents by the clerk of the transferor court, the clerk of the transferee court shall enter any judgment in the action on the judgment index of the transferee court. The judgment, once filed and entered on the judgment index of the transferee court, shall be a lien on the property of the debtor in any county in which such judgment is filed. Transfer of the action shall not change the obligations of the parties under any judgment entered in the action regardless of the status of the transfer.

(4) If the transferred civil action involves a support order that has payment records maintained by the Title IV-D Division as defined in section 43-3341, the transferor court order shall notify the division to make the necessary changes in the support payment records. Support payments shall commence in the transferee court on the first day of the month following the order of transfer, payments made prior to such date shall be considered payment on a judgment entered by the transferor court, and payments made on and after such date shall be considered payment on a judgment entered by the transferee court.

Source: R.S.1867, Code § 61, p. 402; G.S.1873, c. 57, § 61, p. 532; R.S.1913, § 7621; C.S.1922, § 8564; C.S.1929, § 20-410; R.S. 1943, § 25-410; Laws 1971, LB 576, § 8; Laws 2010, LB712, § 1; Laws 2018, LB193, § 6.

Cross References

For disqualification of judge, see sections 24-723.01, 24-739, and 24-740.

25-412 Change of venue in local actions involving real estate; transfer and entry of judgment.

When an action affecting the title or possession of real estate has been brought in or transferred to any court of a county, other than the county in which the real estate or some portion of it is situated, the clerk of such court must, after final judgment therein, certify such judgment under his or her seal of office, and transmit the same to the corresponding court of the county in which the real estate affected by the action is situated. The clerk receiving such copy must file and record such judgment in the records of the court, briefly designating it as a judgment transferred from court (naming the proper court).

Source: G.S.1873, c. 57, § 4, p. 712; R.S.1913, § 7623; C.S.1922, § 8566; C.S.1929, § 20-412; R.S.1943, § 25-412; Laws 2018, LB193, § 7.

25-412.04 Criminal and civil trials; agreements for change of venue; jury; selection.

The jury for any case to be tried pursuant to an agreement entered into under section 25-412.03 shall be selected from the county in which the case was first filed. The jury shall be selected in the manner prescribed in the Jury Selection Act. The summons shall direct attendance before the court by which the case is to be tried and the return thereof shall be made to the same court.

Source: Laws 1975, LB 97, § 4; R.S.1943, (1985), § 24-904; Laws 2020, LB387, § 36.
Operative date January 1, 2021.

ARTICLE 5

COMMENCEMENT OF ACTIONS; PROCESS

(b) SERVICE AND RETURN OF SUMMONS

Section

25-511. Service on employee of the state.

25-516.01. Service; voluntary appearance; defenses.

(e) LIS PENDENS

25-533. Attachment and execution issued from another county; sheriff file notice.

(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.

25-516.01 Service; voluntary appearance; defenses.

(1) The voluntary appearance of the party is equivalent to service.

(2) A defense of lack of personal jurisdiction, insufficiency of process, or insufficiency of service of process may be asserted only under the procedure provided in the pleading rules adopted by the Supreme Court. If any of those defenses are asserted either by motion or in a responsive pleading and the court overrules the defense, an objection that the court erred in its ruling will be waived and not preserved for appellate review if the party asserting the defense either (a) thereafter files a demand for affirmative relief by way of counterclaim, cross-claim, or third-party claim or (b) fails to dismiss a demand for such affirmative relief that was previously filed. If any of those defenses are asserted either by motion or in a responsive pleading and the court overrules the defense, an objection that the court erred in its ruling on any issue, except an objection to the court's ruling on personal jurisdiction, will be waived and not preserved for appellate review if the party asserting the defense thereafter participates in proceedings on any issue other than those defenses.

(3) The filing of a suggestion of bankruptcy is not an appearance and does not waive the defense of lack of personal jurisdiction, insufficiency of process, or insufficiency of service of process.

Source: Laws 1983, LB 447, § 32; Laws 2002, LB 876, § 15; Laws 2019, LB308, § 2.

(e) LIS PENDENS

25-533 Attachment and execution issued from another county; sheriff file notice.

No levy of attachment or execution on real estate issued from any other county shall be notice to a subsequent vendee or encumbrancer in good faith, unless the sheriff has filed a notice on the record that the land, describing it,

has been so attached or levied on, the cause in which it was so attached, and when it was done.

Source: Laws 1895, c. 73, § 2, p. 314; R.S.1913, § 7653; C.S.1922, § 8597; C.S.1929, § 20-533; R.S.1943, § 25-533; Laws 2018, LB193, § 8.

ARTICLE 6 DISMISSAL OF ACTIONS

Section

25-602. Dismissal without prejudice; by plaintiff in vacation; exceptions; payment of costs.

25-602 Dismissal without prejudice; by plaintiff in vacation; exceptions; payment of costs.

The plaintiff in any case pending in the district court or Supreme Court of the state, when no counterclaim or setoff has been filed by the opposite party, has the right in the vacation of any of such courts to dismiss such action without prejudice, upon payment of costs, which dismissal shall be, by the clerk of any of such courts, entered upon the record and take effect from and after the date thereof.

Source: Laws 1867, § 1, p. 51; R.S.1913, § 7655; C.S.1922, § 8599; C.S.1929, § 20-602; R.S.1943, § 25-602; Laws 2018, LB193, § 9.

ARTICLE 9 MISCELLANEOUS PROCEEDINGS; MOTIONS AND ORDERS

(a) OFFER TO COMPROMISE

Section

25-901. Offer of judgment before trial; procedure; effect.

(d) MOTIONS AND ORDERS

25-915. Orders out of court; record.

(a) OFFER TO COMPROMISE

25-901 Offer of judgment before trial; procedure; effect.

The defendant in an action for the recovery of money only may, at any time before the trial, serve upon the plaintiff or the plaintiff's attorney an offer in writing to allow judgment to be taken against the defendant for the sum specified therein. If the plaintiff accepts the offer and gives notice thereof to the defendant or the defendant's attorney, within five days after the offer was served, the offer and an affidavit that the notice of acceptance was delivered in the time limited may be filed by the plaintiff or the defendant may file the acceptance, with a copy of the offer verified by affidavit. In either case, the offer and acceptance shall be entered upon the record, and judgment shall be rendered accordingly. If the notice of acceptance is not given in the period limited, the offer shall be deemed withdrawn and shall not be given in evidence or mentioned on the trial. If the plaintiff fails to obtain judgment for more than was offered by the defendant, the plaintiff shall pay the defendant's cost from the time of the offer.

Source: R.S.1867, Code § 565, p. 493; R.S.1913, § 7717; C.S.1922, § 8661; C.S.1929, § 20-901; R.S.1943, § 25-901; Laws 2018, LB193, § 10.

(d) MOTIONS AND ORDERS

25-915 Orders out of court; record.

Orders made out of court shall be forthwith entered by the clerk in the record of the court in the same manner as orders made in term.

Source: R.S.1867, Code § 579, p. 495; R.S.1913, § 7731; C.S.1922, § 8675; C.S.1929, § 20-915; R.S.1943, § 25-915; Laws 2018, LB193, § 11.

ARTICLE 10**PROVISIONAL REMEDIES**

(a) ATTACHMENT AND GARNISHMENT

Section

25-1031.02. Garnishment; costs; fee.

(a) ATTACHMENT AND GARNISHMENT

25-1031.02 Garnishment; costs; fee.

(1) The party seeking garnishment shall advance the costs of transcript and filing the matter in the district court.

(2) The district court shall be entitled to the following fee in civil matters: For issuance of a writ of execution, restitution, garnishment, attachment, and examination in aid of execution, a fee of five dollars each.

Source: Laws 1955, c. 86, § 3, p. 259; Laws 1988, LB 1030, § 16; Laws 2018, LB193, § 12.

ARTICLE 11**TRIAL**

(b) TRIAL BY JURY

Section

25-1107.01. Jurors; permitted to take notes; use; destruction.

25-1108. View of property or place by jury.

(c) VERDICT

25-1121. Special verdicts; when allowed; procedure; filing; record.

(d) TRIAL BY COURT

25-1126. Jury trial; waiver.

(e) TRIAL BY REFEREE

25-1129. Reference by consent; when allowed.

(f) EXCEPTIONS

25-1140.09. Bill of exceptions; preparation; court reporter; fees; procedure for preparation; taxation of cost.

(h) GENERAL PROVISIONS

25-1149. Issues; order in which tried; time of hearing.

(b) TRIAL BY JURY

25-1107.01 Jurors; permitted to take notes; use; destruction.

Jurors shall be permitted, but not required, to take notes. The notes may be used during the jury's deliberations and shall be treated as confidential between

the juror making them and the other jurors. The notes shall not be preserved in any form. The trial judge shall ensure the confidentiality of the notes during the course of the trial and the jury's deliberations and shall instruct the bailiff to immediately mutilate and destroy such notes upon return of the verdict.

Source: Laws 2008, LB1014, § 71; Laws 2020, LB387, § 37.
Operative date January 1, 2021.

25-1108 View of property or place by jury.

Whenever, in the opinion of the court, it is proper for the jury to have a view of property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body, under charge of the bailiff, to the place, which shall be shown to them by the bailiff, an individual appointed by the court for that purpose, or both. While the jury are thus absent, no person other than the bailiff or individual so appointed shall speak to them on any subject connected with the trial.

Source: R.S.1867, Code § 284, p. 442; R.S.1913, § 7847; C.S.1922, § 8791; C.S.1929, § 20-1108; R.S.1943, § 25-1108; Laws 2020, LB387, § 38.
Operative date January 1, 2021.

(c) VERDICT

25-1121 Special verdicts; when allowed; procedure; filing; record.

In every action for the recovery of money only or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict, in writing, upon all or any of the issues and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact to be stated in writing, and may direct a written finding thereon. The special verdict or finding must be filed with the clerk and entered upon the record.

Source: R.S.1867, Code § 293, p. 443; R.S.1913, § 7860; C.S.1922, § 8804; C.S.1929, § 20-1121; R.S.1943, § 25-1121; Laws 2018, LB193, § 13.

(d) TRIAL BY COURT

25-1126 Jury trial; waiver.

The trial by jury may be waived by the parties in actions arising on contract and with assent of the court in other actions (1) by the consent of the party appearing, when the other party fails to appear at the trial by himself or herself or by attorney, (2) by written consent, in person or by attorney, filed with the clerk, and (3) by oral consent in open court entered upon the record.

Source: R.S.1867, Code § 296, p. 444; R.S.1913, § 7864; C.S.1922, § 8809; C.S.1929, § 20-1126; R.S.1943, § 25-1126; Laws 2018, LB193, § 14.

(e) TRIAL BY REFEREE

25-1129 Reference by consent; when allowed.

All or any of the issues in the action, whether of fact or law or both, may be referred to a referee upon the written consent of the parties or upon their oral consent in court entered upon the record.

Source: R.S.1867, Code § 298, p. 444; R.S.1913, § 7867; C.S.1922, § 8812; C.S.1929, § 20-1129; R.S.1943, § 25-1129; Laws 2008, LB1014, § 10; Laws 2018, LB193, § 15.

(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.

(h) GENERAL PROVISIONS

25-1149 Issues; order in which tried; time of hearing.

The trial of an issue of fact and the assessment of damages in any case shall be in the order in which they are placed on the trial docket, unless by consent of parties or the order of the court they are continued, placed at the heel of the trial docket, or temporarily postponed. The time of hearing all other cases shall be in the order in which they are placed on the trial docket, unless the court shall otherwise direct. The court may in its discretion hear at any time a motion, may by rule prescribe the time for hearing motions, and may provide for dismissing actions without prejudice for want of prosecution.

Source: R.S.1867, Code § 324, p. 448; Laws 1887, c. 94, § 2, p. 648; Laws 1899, c. 83, § 2, p. 339; R.S.1913, § 7890; C.S.1922, § 8832; C.S.1929, § 20-1149; R.S.1943, § 25-1149; Laws 2018, LB193, § 16.

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.
- 25-1237. Foreign jurisdiction; civil action; subpoena for discovery in Nebraska; powers.

(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 a person 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) Except as provided in subsection (6) of this section, 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) A trial subpoena in a civil action or proceeding that commands testimony by an employee of the State of Nebraska or a political subdivision thereof or a privately employed security guard, under the circumstances described in section 33-139.01, shall contain the following statement: As a witness in [insert name of court], you are entitled to be compensated for your actual and necessary expenses if you are required to travel outside of your county of residence to testify. Ask the lawyer or party who subpoenaed you or the clerk of the court for information about what you should do to receive compensation, if any, to which you are entitled.

(7) 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.

(8) 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.

(9) 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; Laws 2020, LB912, § 12.
Effective date November 14, 2020.

25-1224 Subpoena; to whom directed; production of documents, information, or tangible things; Supreme Court; powers.

(1) A subpoena commanding a person to appear and testify at a trial or deposition may command that at the same time and place specified in the subpoena for the person to appear and testify, the person must produce designated documents, electronically stored information, or tangible things in the person'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 person to produce designated documents, electronically stored information, or tangible things in the person'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; Laws 2020, LB912, § 13.
Effective date November 14, 2020.

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 person 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 person 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 person, and the reason why the person 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; Laws 2020, LB912, § 14.
Effective date November 14, 2020.

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 person 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; Laws 2020, LB912, § 15. Effective date November 14, 2020.

25-1236 Repealed. Laws 2017, LB509, § 8.

25-1237 Foreign jurisdiction; civil action; subpoena for discovery in Nebraska; powers.

(1) When authorized by rules promulgated by the Supreme Court, the clerk of the district court may issue a subpoena for discovery in Nebraska for a civil proceeding pending in a foreign jurisdiction. Such a subpoena may command a person to testify at a deposition or command a nonparty to provide discovery without a deposition.

(2) The Supreme Court may promulgate rules for subpoenas under this section. The rules may specify the amount of a fee, if any, that must be paid to the clerk of the district court for the issuance of such subpoenas. Any such rules shall not conflict with laws governing such matters.

Source: Laws 2020, LB912, § 11. Effective date November 14, 2020.

**ARTICLE 13
JUDGMENTS**

(a) JUDGMENTS IN GENERAL

Section

25-1301. Judgment, rendition of judgment, entry of judgment, decree, or final order, defined; records; clerk; duties.

25-1301.01. Civil judgment or final order; duty of clerk; exception.

(b) LIENS

25-1303. Transcript of judgment to other county; effect.

25-1305. Federal court judgment; transcript to other county; effect.

(e) MANNER OF ENTERING JUDGMENT

25-1313. Jury trial; judgment by court; entry of order.

25-1318. Judgments and orders; record.

25-1319. Repealed. Laws 2018, LB193, § 97.

25-1320. Repealed. Laws 2018, LB193, § 97.

25-1321. Repealed. Laws 2018, LB193, § 97.

25-1322. Repealed. Laws 2018, LB193, § 97.

(h) SUMMARY JUDGMENTS

25-1332. Motion for summary judgment; proceedings.

(a) JUDGMENTS IN GENERAL

25-1301 Judgment, rendition of judgment, entry of judgment, decree, or final order, defined; records; clerk; duties.

(1) A judgment is the final determination of the rights of the parties in an action.

(2) Rendition of a judgment is the act of the court, or a judge thereof, in signing a single written document stating all of the relief granted or denied in an action.

(3) The entry of a judgment, decree, or final order occurs when the clerk of the court places the file stamp and date upon the judgment, decree, or final order. For purposes of determining the time for appeal, the date stamped on the judgment, decree, or final order shall be the date of entry.

(4) The clerk shall prepare and maintain the records of judgments, decrees, and final orders that are required by statute and rule of the Supreme Court. Whenever any judgment is paid and discharged or when a satisfaction of judgment is filed, the clerk shall enter such fact upon the judgment index.

Source: R.S.1867, Code § 428, p. 465; R.S.1913, § 7994; C.S.1922, § 8935; C.S.1929, § 20-1301; R.S.1943, § 25-1301; Laws 1961, c. 111, § 1, p. 350; Laws 1999, LB 43, § 3; Laws 2018, LB193, § 17; Laws 2020, LB1028, § 3.
Effective date November 14, 2020.

Cross References

For rate of interest on judgment, see section 45-103.

25-1301.01 Civil judgment or final order; duty of clerk; exception.

Within three working days after the entry of any civil judgment or final order, except judgments by default when service has been obtained by publication or interlocutory orders styled as judgments, the clerk of the court shall send the judgment or final order by United States mail or by service through the court's electronic case management system to each party whose address appears in the records of the action or to the party's attorney or attorneys of record.

Source: Laws 1961, c. 111, § 2, p. 350; Laws 1969, c. 186, § 1, p. 778; Laws 1977, LB 124, § 1; Laws 1999, LB 43, § 4; Laws 2018, LB193, § 18; Laws 2020, LB1028, § 4.
Effective date November 14, 2020.

(b) LIENS

25-1303 Transcript of judgment to other county; effect.

The transcript of a judgment of any district court in this state may be filed in the office of the clerk of the district court in any county. Such transcript, when so filed and entered on the judgment index, shall be a lien on the property of the debtor in any county in which such transcript is so filed, in the same manner and under the same conditions only as in the county where such judgment was rendered, and execution may be issued on such transcript in the same manner as on the original judgment. Such transcript shall at no time have any greater validity or effect than the original judgment.

Source: Laws 1869, § 1, p. 158; R.S.1913, § 7796; C.S.1922, § 8937; Laws 1929, c. 83, § 1, p. 332; C.S.1929, § 20-1303; R.S.1943, § 25-1303; Laws 2018, LB193, § 19.

Cross References

County court judgment, transcript to district court for lien, see section 25-2721.

25-1305 Federal court judgment; transcript to other county; effect.

A transcript of any judgment or decree rendered in a circuit or district court of the United States within the State of Nebraska, may be filed in the office of the clerk of the district court in any county in this state. Such transcript, when

so filed and entered on the judgment index, shall be a lien on the property of the debtor in any county in which such transcript is so filed, in the same manner and under the same conditions only as if such judgment or decree had been rendered by the district court of such county. Such transcript shall at no time have a greater validity or effect than the original judgment. The lands and tenements of the debtor within the county where the judgment is entered shall be bound for the satisfaction thereof from the day on which such judgment is rendered without the filing of a transcript. Orders reviving dormant judgments shall become liens upon the lands and tenements of the judgment debtor only when such order is entered on the judgment index in the same manner as an original judgment.

Source: Laws 1889, c. 30, § 1, p. 377; R.S.1913, § 7998; C.S.1922, § 8939; Laws 1929, c. 83, § 1, p. 332; C.S.1929, § 20-1305; R.S.1943, § 25-1305; Laws 2018, LB193, § 20.

(e) MANNER OF ENTERING JUDGMENT

25-1313 Jury trial; judgment by court; entry of order.

When a trial by jury has been had, judgment must be ordered by the court and entered upon the record in conformity to the verdict, unless it is special, or the court orders the case to be reserved for future argument or consideration.

Source: R.S.1867, Code § 438, p. 467; R.S.1913, § 8006; C.S.1922, § 8947; C.S.1929, § 20-1313; R.S.1943, § 25-1313; Laws 1961, c. 111, § 3, p. 350; Laws 2020, LB387, § 39.
Operative date January 1, 2021.

25-1318 Judgments and orders; record.

All judgments and orders must be entered on the record of the court and specify clearly the relief granted or order made in the action.

Source: R.S.1867, Code § 443, p. 467; R.S.1913, § 8011; C.S.1922, § 8952; C.S.1929, § 20-1318; R.S.1943, § 25-1318; Laws 2018, LB193, § 21.

25-1319 Repealed. Laws 2018, LB193, § 97.

25-1320 Repealed. Laws 2018, LB193, § 97.

25-1321 Repealed. Laws 2018, LB193, § 97.

25-1322 Repealed. Laws 2018, LB193, § 97.

(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, stipula-

tions, 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.

ARTICLE 14

ABATEMENT AND REVIVOR

(b) REVIVOR OF ACTION

Section

25-1415. Abatement of actions by death or cessation of powers of representative; duty of court.

25-1416. Death of plaintiff; right of defendant to compel revivor.

(b) REVIVOR OF ACTION

25-1415 Abatement of actions by death or cessation of powers of representative; duty of court.

When it appears to the court by affidavit that either party to an action has been dead, or where a party sues or is sued as a personal representative, that his or her powers have ceased for a period so long that the action cannot be revived in the names of his or her representatives or successor, without the consent of both parties, it shall order the action to be stricken from the trial docket.

Source: R.S.1867, Code § 468, p. 471; R.S.1913, § 8036; C.S.1922, § 8977; C.S.1929, § 20-1415; R.S.1943, § 25-1415; Laws 2018, LB193, § 22.

25-1416 Death of plaintiff; right of defendant to compel revivor.

At any term of the court succeeding the death of the plaintiff, while the action remains on the trial docket, the defendant, having given to the plaintiff's proper representatives in whose names the action might be revived ten days' notice of

the application therefor, may have an order to strike the action from the trial docket and for costs against the estate of the plaintiff, unless the action is forthwith revived.

Source: R.S.1867, Code § 469, p. 471; R.S.1913, § 8037; C.S.1922, § 8978; C.S.1929, § 20-1416; R.S.1943, § 25-1416; Laws 2018, LB193, § 23.

ARTICLE 15 EXECUTIONS AND EXEMPTIONS

(a) EXECUTIONS

Section

- 25-1504. Lien of judgment; when attaches; lands within county where entered; other lands; chattels.
- 25-1510. Stay of execution; sureties; approval; bond tantamount to judgment confessed.
- 25-1521. Intervening claimants; proceedings to ascertain title.
- 25-1531. Mortgage foreclosure; confirmation of sale; grounds for refusing to confirm; time; motion; notice.

(b) EXEMPTIONS

- 25-1552. Personal property except wages; debtors; claim of exemption; procedure; adjustment by Department of Revenue.
- 25-1556. Specific exemptions; personal property; selection by debtor; adjustment by Department of Revenue.

(c) PROCEEDINGS IN AID OF EXECUTION

- 25-1577. Discovery of property of debtor; disobedience of order of court; penalty.
- 25-1578. Discovery of property of debtor; orders to judgment debtors and witnesses; service; filing; record.

(f) NEBRASKA UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

- 25-1587.04. Notice of filing.
- 25-1587.06. Fees.

(a) EXECUTIONS

25-1504 Lien of judgment; when attaches; lands within county where entered; other lands; chattels.

The lands and tenements of the debtor within the county where the judgment is entered shall be bound for the satisfaction thereof only from the day on which such judgments are rendered. All other lands, as well as goods and chattels of the debtor, shall be bound from the time they shall be seized in execution. A judgment shall be considered as rendered when such judgment has been entered on the judgment index.

Source: R.S.1867, Code § 477, p. 473; R.S.1913, § 8045; C.S.1922, § 8986; Laws 1927, c. 59, § 1, p. 221; Laws 1929, c. 83, § 3, p. 333; C.S.1929, § 20-1504; R.S.1943, § 25-1504; Laws 2018, LB193, § 24.

25-1510 Stay of execution; sureties; approval; bond tantamount to judgment confessed.

The sureties for the stay of execution may be taken and approved by the clerk, the bond shall be recorded on the register of actions and have the force and effect of a judgment confessed from the date thereof against the property of the

sureties, and the clerk shall enter such sureties on the judgment index, as in the case of other judgments.

Source: Laws 1875, § 6, p. 50; R.S.1913, § 8051; C.S.1922, § 8992; C.S.1929, § 20-1510; R.S.1943, § 25-1510; Laws 2018, LB193, § 25.

25-1521 Intervening claimants; proceedings to ascertain title.

If the officer, by virtue of any writ of execution issued from any court of record in this state, shall levy the same on any goods and chattels claimed by any person other than the defendant, such officer shall give notice in writing to the court, in which shall be set forth the names of the plaintiff and defendant, together with the name of the claimant. At the same time such officer shall furnish the court with a schedule of the property claimed. Immediately upon the filing of such notice and schedule, the court shall determine the right of the claimant to the property in controversy.

Source: R.S.1867, Code § 486, p. 474; R.S.1913, § 8062; C.S.1922, § 9003; C.S.1929, § 20-1521; R.S.1943, § 25-1521; Laws 1972, LB 1032, § 131; Laws 1973, LB 226, § 13; Laws 2018, LB193, § 26.

25-1531 Mortgage foreclosure; confirmation of sale; grounds for refusing to confirm; time; motion; notice.

If the court, upon the return of any writ of execution or order of sale for the satisfaction of which any lands and tenements have been sold, after having carefully examined the proceedings of the officer, is satisfied that the sale has in all respects been made in conformity to the provisions of this chapter and that the property was sold for fair value, under the circumstances and conditions of the sale, or that a subsequent sale would not realize a greater amount, the court shall enter upon the record an order that the court is satisfied of the legality of such sale, and an order that the officer make the purchaser a deed of such lands and tenements. Prior to the confirmation of sale pursuant to this section, the party seeking confirmation of sale shall, except in the circumstances described in section 40-103, provide notice to the debtor informing him or her of the homestead exemption procedure available pursuant to Chapter 40, article 1. The notice shall be given by certified mailing at least ten days prior to any hearing on confirmation of sale. The officer on making such sale may retain the purchase money in his or her hands until the court has examined his or her proceedings as aforesaid, when he or she shall pay the same to the person entitled thereto, agreeable to the order of the court. If such sale pertains to mortgaged premises being sold under foreclosure proceedings and the amount of such sale is less than the amount of the decree rendered in such proceedings, the court may refuse to confirm such sale, if, in its opinion, such mortgaged premises have a fair and reasonable value equal to or greater than the amount of the decree. The court shall in any case condition the confirmation of such sale upon such terms or under such conditions as may be just and equitable. The judge of any district court may confirm any sale at any time after such officer has made his or her return, on motion and ten days' notice to the adverse party or his or her attorney of record, if made in vacation, and such notice shall include information on the homestead exemption procedure available pursuant to Chapter 40, article 1. When any sale is confirmed in vacation

the judge confirming the same shall cause his or her order to be entered on the record by the clerk. Upon application to the court by the judgment debtor within sixty days after the confirmation of any sale confirmed pursuant to this section, such sale shall be set aside if the court finds that the party seeking confirmation of sale failed to provide notice to the judgment debtor regarding homestead exemption procedures at least ten days prior to the confirmation of sale as required by this section.

Source: R.S.1867, Code § 498, p. 478; Laws 1875, § 1, p. 38; R.S.1913, § 8077; Laws 1915, c. 149, § 3, p. 319; C.S.1922, § 9013; C.S. 1929, § 20-1531; Laws 1933, c. 45, § 1, p. 254; C.S.Supp.,1941, § 20-1531; R.S.1943, § 25-1531; Laws 1983, LB 107, § 1; Laws 1983, LB 447, § 42; Laws 2018, LB193, § 27.

(b) EXEMPTIONS

25-1552 Personal property except wages; debtors; claim of exemption; procedure; adjustment by Department of Revenue.

(1) Each natural person residing in this state shall have exempt from forced sale on execution the sum of five thousand dollars in personal property, except wages. The provisions of this section do not apply to the exemption of wages, that subject being fully provided for by section 25-1558. In proceedings involving a writ of execution, the exemption from execution under this section shall be claimed in the manner provided by section 25-1516. The debtor desiring to claim an exemption from execution under this section shall, at the time the request for hearing is filed, file a list of the whole of the property owned by the debtor and an indication of the items of property which he or she claims to be exempt from execution pursuant to this section and section 25-1556, along with a value for each item listed. The debtor or his or her authorized agent may select from the list an amount of property not exceeding the value exempt from execution under this section according to the debtor's valuation or the court's valuation if the debtor's valuation is challenged by a creditor.

(2) The dollar limitations in this section shall be adjusted by the Department of Revenue every fifth year beginning with the year 2023 to reflect the cumulative percentage change over the preceding five years in the Consumer Price Index for All Urban Consumers, as prepared by the United States Department of Labor, Bureau of Labor Statistics.

Source: R.S.1867, Code § 521, p. 484; Laws 1913, c. 52, § 1, p. 158; R.S.1913, § 8099; C.S.1922, § 9035; C.S.1929, § 20-1553; R.S. 1943, § 25-1552; Laws 1973, LB 16, § 1; Laws 1977, LB 60, § 1; Laws 1980, LB 940, § 2; Laws 1993, LB 458, § 12; Laws 1997, LB 372, § 1; Laws 2018, LB105, § 1.

25-1556 Specific exemptions; personal property; selection by debtor; adjustment by Department of Revenue.

(1) No property hereinafter mentioned shall be liable to attachment, execution, or sale on any final process issued from any court in this state, against any person being a resident of this state: (a) The immediate personal possessions of the debtor and his or her family; (b) all necessary wearing apparel of the debtor and his or her family; (c) the debtor's interest, not to exceed an aggregate fair market value of three thousand dollars, in household furnishings, household

goods, household computers, household appliances, books, or musical instruments which are held primarily for personal, family, or household use of such debtor or the dependents of such debtor; (d) the debtor's interest, not to exceed an aggregate fair market value of five thousand dollars, in implements, tools, or professional books or supplies, other than a motor vehicle, held for use in the principal trade or business of such debtor or his or her family; (e) the debtor's interest, not to exceed five thousand dollars, in a motor vehicle; and (f) the debtor's interest in any professionally prescribed health aids for such debtor or the dependents of such debtor. The specific exemptions in this section shall be selected by the debtor or his or her agent, clerk, or legal representative in the manner provided in section 25-1552.

(2) The dollar limitations in this section shall be adjusted by the Department of Revenue every fifth year beginning with the year 2023 to reflect the cumulative percentage change over the preceding five years in the Consumer Price Index for All Urban Consumers, as prepared by the United States Department of Labor, Bureau of Labor Statistics.

Source: R.S.1867, Code § 530, p. 485; R.S.1913, § 8103; C.S.1922, § 9039; C.S.1929, § 20-1557; R.S.1943, § 25-1556; Laws 1969, c. 187, § 1, p. 778; Laws 1973, LB 16, § 2; Laws 1977, LB 60, § 2; Laws 1997, LB 372, § 2; Laws 2018, LB105, § 2.

Cross References

For other provisions for exempting burial lots and mausoleums, see sections 12-517, 12-520, and 12-605.

(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.

25-1578 Discovery of property of debtor; orders to judgment debtors and witnesses; service; filing; record.

The orders to judgment debtors and witnesses provided for in sections 25-1564 to 25-1580 shall be signed and filed by the judge making the same and

shall be served in the same manner as a summons in other cases. The judge shall sign all such orders. Such orders shall be filed with the clerk of the court of the county in which the judgment is rendered or the transcript of the judgment filed, and the clerk shall enter on the record the date and time of filing the same.

Source: R.S.1867, Code § 547, p. 489; R.S.1913, § 8126; C.S.1922, § 9062; C.S.1929, § 20-1580; R.S.1943, § 25-1578; Laws 2018, LB193, § 28.

(f) NEBRASKA UNIFORM ENFORCEMENT
OF FOREIGN JUDGMENTS ACT

25-1587.04 Notice of filing.

(a) At the time of the filing of the foreign judgment, the judgment creditor or his or her lawyer shall make and file with the clerk of the court an affidavit setting forth the name and last-known post office address of the judgment debtor and the judgment creditor.

(b) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall file notice of the mailing on the record. The notice shall include the name and address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

Source: Laws 1993, LB 458, § 4; Laws 2018, LB193, § 29.

25-1587.06 Fees.

Any person filing a foreign judgment or a judgment from another court in this state shall pay to the clerk of the district or county court a fee as provided in section 33-106 or 33-123 for filing a transcript of judgment. Fees for filing, transcription, or other enforcement proceedings shall be as provided for judgments of the courts of this state.

Source: Laws 1993, LB 458, § 6; Laws 1995, LB 270, § 1; Laws 2018, LB193, § 30.

ARTICLE 16

JURY

Section	
25-1601.	Transferred to section 25-1650.
25-1601.03.	Transferred to section 25-1645.
25-1602.	Transferred to section 25-1651.
25-1603.	Transferred to section 25-1649.
25-1606.	Transferred to section 25-1660.
25-1607.	Transferred to section 25-1661.
25-1609.	Repealed. Laws 2020, LB387, § 49.
25-1611.	Transferred to section 25-1675.
25-1612.	Transferred to section 25-1677.
25-1625.	Transferred to section 25-1647.
25-1626.	Transferred to section 25-1648.

COURTS; CIVIL PROCEDURE

Section

- 25-1626.02. Repealed. Laws 2020, LB387, § 49.
- 25-1627. Transferred to section 25-1653.
- 25-1627.01. Repealed. Laws 2020, LB387, § 49.
- 25-1628. Transferred to section 25-1654.
- 25-1629. Transferred to section 25-1659.
- 25-1629.01. Transferred to section 25-1657.
- 25-1629.02. Transferred to section 25-1658.
- 25-1629.03. Repealed. Laws 2020, LB387, § 49.
- 25-1629.04. Repealed. Laws 2020, LB387, § 49.
- 25-1630. Transferred to section 25-1676.
- 25-1631. Transferred to section 25-1671.
- 25-1631.03. Transferred to section 25-1663.
- 25-1632. Transferred to section 25-1662.
- 25-1632.01. Transferred to section 25-1664.
- 25-1633. Transferred to section 25-1669.
- 25-1633.01. Repealed. Laws 2020, LB387, § 49.
- 25-1634. Transferred to section 25-1665.
- 25-1634.01. Transferred to section 25-1667.
- 25-1634.02. Transferred to section 25-1666.
- 25-1634.03. Repealed. Laws 2020, LB387, § 49.
- 25-1635. Transferred to section 25-1673.
- 25-1636. Transferred to section 25-1652.
- 25-1637. Transferred to section 25-1678.
- 25-1639. Transferred to section 25-1670.
- 25-1640. Transferred to section 25-1674.
- 25-1641. Transferred to section 25-1656.
- 25-1642. Repealed. Laws 2020, LB387, § 49.
- 25-1643. Repealed. Laws 2020, LB387, § 49.
- 25-1644. Act, how cited.
- 25-1645. Act; intent and purpose.
- 25-1646. Terms, defined.
- 25-1647. Jury commissioner; designation; salary; expenses; duties; salary increase, when effective.
- 25-1648. Jury commissioner; assistance; deputy; appointment; powers.
- 25-1649. Jurors; selection.
- 25-1650. Jurors; qualifications; disqualifications; excused or exempt, when.
- 25-1651. Jurors; actions to which county or other municipal corporation a party; inhabitants and taxpayers; serve, when.
- 25-1652. Jurors; challenge for cause; grounds.
- 25-1653. Jury list; key number; determination; record.
- 25-1654. Combined list; master key list; how produced.
- 25-1655. Potential jurors; how selected.
- 25-1656. Petit jurors; how selected; summons or notice to report.
- 25-1657. Juror qualification form; potential juror; complete; return; when.
- 25-1658. Juror qualification form; failure to return; effect; contempt of court.
- 25-1659. Master key list; juror qualification form; review; names stricken.
- 25-1660. Jurors; how summoned; notice; deadlines, applicability.
- 25-1661. Jurors; appearance; failure to appear or serve without good cause; contempt of court.
- 25-1662. Petit jury for subsequent periods; how drawn; how notified.
- 25-1663. Petit jury; examination by judge; excess jurors.
- 25-1664. Petit jury; special jury panel in criminal cases.
- 25-1665. Petit jury; extra jurors to complete jury panel; tales jurors.
- 25-1666. Petit jury; tales jurors; how chosen.
- 25-1667. Petit jury; postponement of service.
- 25-1668. Grand jury; potential jurors; how and when drawn; juror qualification form.
- 25-1669. Grand jury; how drawn; alternate jurors.
- 25-1670. Juror; serve; limitations.
- 25-1671. County court; advance jury selection; when authorized.
- 25-1672. Jury trial; notice to jury commissioner; waiver.

Section	
25-1673.	Jurors; disclosing names; when permissible; penalty; access to juror qualification forms.
25-1674.	Employee; penalized due to jury service; prohibited; penalty.
25-1675.	Act; neglect or failure by officers; contempt of court.
25-1676.	Jury list; tampering; solicitation; penalty.
25-1677.	Packing juries; solicitation of jury service; penalties.
25-1678.	Juries; proceedings stayed; jury panel or list quashed; grounds; procedures; new list, order for.

25-1601 Transferred to section 25-1650.

25-1601.03 Transferred to section 25-1645.

25-1602 Transferred to section 25-1651.

25-1603 Transferred to section 25-1649.

25-1606 Transferred to section 25-1660.

25-1607 Transferred to section 25-1661.

25-1609 Repealed. Laws 2020, LB387, § 49.
Operative date January 1, 2021.

25-1611 Transferred to section 25-1675.

25-1612 Transferred to section 25-1677.

25-1625 Transferred to section 25-1647.

25-1626 Transferred to section 25-1648.

25-1626.02 Repealed. Laws 2020, LB387, § 49.
Operative date January 1, 2021.

25-1627 Transferred to section 25-1653.

25-1627.01 Repealed. Laws 2020, LB387, § 49.
Operative date January 1, 2021.

25-1628 Transferred to section 25-1654.

25-1629 Transferred to section 25-1659.

25-1629.01 Transferred to section 25-1657.

25-1629.02 Transferred to section 25-1658.

25-1629.03 Repealed. Laws 2020, LB387, § 49.
Operative date January 1, 2021.

25-1629.04 Repealed. Laws 2020, LB387, § 49.
Operative date January 1, 2021.

25-1630 Transferred to section 25-1676.

25-1631 Transferred to section 25-1671.

25-1631.03 Transferred to section 25-1663.

25-1632 Transferred to section 25-1662.

25-1632.01 Transferred to section 25-1664.

25-1633 Transferred to section 25-1669.

25-1633.01 Repealed. Laws 2020, LB387, § 49.
Operative date January 1, 2021.

25-1634 Transferred to section 25-1665.

25-1634.01 Transferred to section 25-1667.

25-1634.02 Transferred to section 25-1666.

25-1634.03 Repealed. Laws 2020, LB387, § 49.
Operative date January 1, 2021.

25-1635 Transferred to section 25-1673.

25-1636 Transferred to section 25-1652.

25-1637 Transferred to section 25-1678.

25-1639 Transferred to section 25-1670.

25-1640 Transferred to section 25-1674.

25-1641 Transferred to section 25-1656.

25-1642 Repealed. Laws 2020, LB387, § 49.
Operative date January 1, 2021.

25-1643 Repealed. Laws 2020, LB387, § 49.
Operative date January 1, 2021.

25-1644 Act, how cited.

Sections 25-1644 to 25-1678 shall be known and may be cited as the Jury Selection Act.

Source: Laws 2020, LB387, § 1.
Operative date January 1, 2021.

25-1645 Act; intent and purpose.

The Legislature hereby declares that it is the intent and purpose of the Jury Selection Act to create a jury system which will ensure that:

- (1) All persons selected for jury service are selected at random from a fair cross section of the population of the area served by the court;
- (2) All qualified citizens have the opportunity to be considered for jury service;
- (3) All qualified citizens fulfill their obligation to serve as jurors when summoned for that purpose; and

(4) No citizen is excluded from jury service in this state as a result of discrimination based upon race, color, religion, sex, national origin, or economic status.

Source: Laws 1979, LB 234, § 1; R.S.1943, (2016), § 25-1601.03; Laws 2020, LB387, § 2.
Operative date January 1, 2021.

25-1646 Terms, defined.

For purposes of the Jury Selection Act:

(1) Combined list means the list created pursuant to section 25-1654 by merging the lists of names from the Department of Motor Vehicles and from election records into one list;

(2) Grand jury means a body of people who are chosen to sit permanently for at least a month and up to a year and who, in ex parte proceedings, decide whether to issue indictments in criminal cases;

(3) Jury commissioner means the person designated in section 25-1647;

(4) Jury list means a list or lists of names of potential jurors drawn from the master key list for possible service on grand and petit juries;

(5) Jury management system means an electronic process in which individuals are randomly selected to serve as grand or petit jurors and for which the presence of a district court judge or other designated official is not required. A jury management system may also provide an electronic process for a potential juror to complete and submit a juror qualification form and to receive summonses and notifications regarding jury service;

(6) Jury panel means the persons summoned to serve as grand or petit jurors for such period of a jury term as determined by the judge or judges;

(7) Jury term means a month, calendar quarter, year, or other period of time as determined by the judge or judges during which grand or petit jurors are selected for service from a master key list. A jury term shall not extend beyond the time by which a new combined list is required to be prepared pursuant to section 25-1654, except by order of the court;

(8) Manual jury selection process means a process in which individuals are randomly selected to serve on a grand or petit jury by drawing names from a wheel or box while in the presence of a district court judge or other official designated by the judge;

(9) Master key list means the list of names selected using the key number pursuant to section 25-1654;

(10) One-step qualifying and summoning system means a process for selecting and summoning grand or petit jurors in which a juror qualification form and summons, or instructions to complete a jury qualification form through a jury management system and a summons, are sent to a potential juror at the same time;

(11) Petit jury means a group of jurors who may be summoned and empaneled in the trial of a specific case;

(12) Tales juror means a person selected from among the bystanders in court or the people of the county to serve as a juror when the original jury panel has become deficient in number; and

(13) Two-step qualifying and summoning system means a process for selecting and summoning grand or petit jurors in which a juror qualification form, or instructions to complete a jury qualification form through a jury management system, is sent to a potential juror and, if the juror is qualified and drawn for jury service, a summons is sent.

Source: Laws 2020, LB387, § 3.
Operative date January 1, 2021.

25-1647 Jury commissioner; designation; salary; expenses; duties; salary increase, when effective.

(1) In each county of the State of Nebraska there shall be a jury commissioner.

(2) In counties having a population of not more than seventy-five thousand inhabitants, the clerk of the district court shall be jury commissioner ex officio.

(3) In counties having a population of more than seventy-five thousand and not more than two hundred thousand inhabitants, the jury commissioner shall be a separate office in the county government or the duties may be performed, when authorized by the judges of the district court within such counties, by the election commissioner. The jury commissioner shall receive an annual salary of not less than one thousand two hundred dollars.

(4) In counties having a population in excess of two hundred thousand inhabitants, the judges of the district court within such counties shall determine whether the clerk of the district court will perform the duties of jury commissioner without additional compensation or the election commissioner will be jury commissioner ex officio. If the jury commissioner is to receive a salary, the amount of the salary shall be fixed by the judges of the district court in an amount not to exceed three thousand dollars per annum.

(5) In all counties the necessary expenses incurred in the performance of the duties of jury commissioner shall be paid by the county board of the county out of the general fund, upon proper claims approved by one of the district judges in the judicial district and duly filed with the county board.

(6) In all counties the jury commissioner shall prepare and file the annual inventory statement with the county board of the county of all county personal property in his or her custody or possession, as provided in sections 23-346 to 23-350.

(7) This section shall be so interpreted as to effectuate its general purpose, to provide, in the public interest, adequate compensation for the jury commissioner and to permit a change in such salary as soon as the change may become operative under the Constitution of Nebraska.

Source: Laws 1915, c. 248, § 1, p. 568; C.S.1922, § 9095; C.S.1929, § 20-1625; Laws 1931, c. 65, § 5, p. 178; Laws 1939, c. 28, § 20, p. 159; C.S.Supp.,1941, § 20-1625; R.S.1943, § 25-1625; Laws 1947, c. 62, § 9, p. 202; Laws 1953, c. 72, § 6, p. 227; Laws 1961, c. 113, § 1, p. 352; Laws 1971, LB 547, § 1; Laws 1975, LB 527, § 1; Laws 1979, LB 234, § 6; Laws 2003, LB 19, § 4; Laws 2010, LB712, § 2; Laws 2013, LB169, § 1; R.S.1943, (2016), § 25-1625; Laws 2020, LB387, § 4.
Operative date January 1, 2021.

Cross References

For appointment of election commissioner in counties having a population in excess of one hundred thousand inhabitants, see section 32-207.

For appointment of election commissioner in counties having a population of twenty thousand to one hundred thousand inhabitants, see section 32-211.

25-1648 Jury commissioner; assistance; deputy; appointment; powers.

(1) A majority of the judges of the district court may by order direct the clerk of the court to furnish such assistance to the jury commissioner as the judges may find necessary.

(2) The jury commissioner shall appoint a deputy jury commissioner from the regular employees of his or her office who shall serve ex officio and who shall hold office during the pleasure of the jury commissioner. The deputy jury commissioner shall be approved by the judge or judges of the district court before taking office. The deputy jury commissioner, during the absence of the jury commissioner from the county or during the sickness or disability of the jury commissioner, with the consent of such judge or judges, may perform any or all of the duties of the jury commissioner.

(3) If there are no regular employees of the office of jury commissioner, he or she may appoint some other county officer or employee thereof as deputy jury commissioner.

Source: Laws 1915, c. 248, § 1, p. 568; C.S.1922, § 9096; C.S.1929, § 20-1626; R.S.1943, § 25-1626; Laws 1951, c. 69, § 1, p. 224; Laws 1953, c. 72, § 7, p. 227; Laws 1955, c. 90, § 2, p. 265; Laws 1955, c. 91, § 1, p. 268; Laws 1965, c. 123, § 1, p. 460; R.S.1943, (2016), § 25-1626; Laws 2020, LB387, § 5.
Operative date January 1, 2021.

25-1649 Jurors; selection.

In each of the county and district courts of this state, the lists of grand and petit jurors shall be made up and jurors selected for jury duty in the manner prescribed in the Jury Selection Act.

Source: R.S.1867, Code § 658, p. 510; R.S.1913, § 8137; C.S.1922, § 9073; C.S.1929, § 20-1603; Laws 1931, c. 36, § 1, p. 129; Laws 1939, c. 18, § 23, p. 113; C.S.Supp.,1941, § 20-1603; R.S.1943, § 25-1603; Laws 1953, c. 72, § 2, p. 225; Laws 1979, LB 234, § 3; Laws 1980, LB 733, § 2; R.S.1943, (2016), § 25-1603; Laws 2020, LB387, § 6.
Operative date January 1, 2021.

25-1650 Jurors; qualifications; disqualifications; excused or exempt, when.

(1) All citizens of the United States residing in any of the counties of this state who are over the age of nineteen years, able to read, speak, and understand the English language, and free from all disqualifications set forth under this section and from all other legal exceptions are qualified to serve on all grand and petit juries in their respective counties. Persons disqualified to serve as either grand or petit jurors are: (a) Judges of any court, (b) clerks of the Supreme or district courts, (c) sheriffs, (d) jailers, (e) persons, or the spouse of any such persons, who are parties to suits pending in the county of his, her, or their residence for trial to that jury panel, (f) persons who have been convicted of a felony when such conviction has not been set aside or a pardon issued, and (g) persons who

are subject to liability for the commission of any offense which by special provision of law disqualifies them. Spouses shall not serve as jurors on the same panel. Persons who are incapable, by reason of physical or mental disability, of rendering satisfactory jury service shall not be qualified to serve on a jury, but a person claiming this disqualification shall be required to submit a physician's certificate as to the disability and the certifying physician is subject to inquiry by the court at its discretion. A nursing mother who requests to be excused shall be excused from jury service until she is no longer nursing her child, but the mother shall be required to submit a physician's certificate in support of her request. A person who is serving on active duty as a member of the United States Armed Forces who requests to be exempt shall be exempt from jury service, but such person shall be required to submit documentation of his or her active-duty status in support of his or her request.

(2) The district court or any judge thereof may exercise the power of excusing any grand or petit juror or any person summoned for grand or petit jury service upon a showing of undue hardship, extreme inconvenience, or public necessity for such period as the court deems necessary. At the conclusion of such period the person shall reappear for jury service in accordance with the court's direction. All excuses and the grounds for such excuses shall be entered upon the record of the court. In districts having more than one judge of the district court, the court may by rule or order assign or delegate to the presiding judge or any one or more judges the sole authority to grant such excuses.

(3) No qualified potential juror is exempt from jury service, except that any person seventy years of age or older who makes a request to be exempt to the court at the time the juror qualification form is filed with the jury commissioner or who makes such a request in writing after being qualified and summoned shall be exempt from serving on grand and petit juries.

(4) A physician's certificate or other documentation or information submitted by a person in support of a claim of disqualification by reason of physical or mental disability or due to such person's status as a nursing mother is not a public record as defined in section 84-712.01 and is not subject to disclosure under sections 84-712 to 84-712.09.

Source: R.S.1867, Code § 657, p. 509; Laws 1911, c. 171, § 1, p. 548; R.S.1913, § 8135; Laws 1917, c. 139, § 1, p. 325; C.S.1922, § 9071; C.S.1929, § 20-1601; Laws 1939, c. 18, § 1, p. 98; C.S.Supp.,1941, § 20-1601; Laws 1943, c. 45, § 1, p. 191; R.S. 1943, § 25-1601; Laws 1953, c. 72, § 1, p. 224; Laws 1955, c. 90, § 1, p. 264; Laws 1959, c. 106, § 1, p. 433; Laws 1959, c. 143, § 1, p. 551; Laws 1969, c. 189, § 1, p. 780; Laws 1979, LB 234, § 2; Laws 1980, LB 733, § 1; Laws 1985, LB 113, § 1; Laws 1993, LB 31, § 2; Laws 2003, LB 19, § 3; R.S.1943, (2016), § 25-1601; Laws 2020, LB387, § 7.
Operative date January 1, 2021.

Cross References

For exemption of National Guard, see section 55-173.

25-1651 Jurors; actions to which county or other municipal corporation a party; inhabitants and taxpayers; serve, when.

On the trial of any suit in which a county or any other municipal corporation is a party, the inhabitants and taxpayers of such county or municipal corporation shall be qualified to serve as jurors if otherwise qualified according to law.

Source: Laws 1877, § 1, p. 16; R.S.1913, § 8136; C.S.1922, § 9072; C.S.1929, § 20-1602; R.S.1943, (2016), § 25-1602; Laws 2020, LB387, § 8.

Operative date January 1, 2021.

25-1652 Jurors; challenge for cause; grounds.

(1) It shall be ground for challenge for cause that any potential juror: (a) Does not possess the qualifications of a juror as set forth in section 25-1650 or is excluded by the terms of section 25-1650; (b) has requested or solicited any officer of the court or officer charged in any manner with the duty of selecting the jury to place such juror upon the jury panel; or (c) otherwise lacks any of the qualifications provided by law.

(2) It shall not be a ground for challenge for cause that a potential juror has read, heard, or watched in news media an account of the commission of a crime with which a defendant is charged, if such juror states under oath that he or she can render an impartial verdict according to the law and the evidence and the court is satisfied as to the truth of such statement. In the trial of any criminal cause, the fact that a person called as a juror has formed an opinion based upon rumor or statements or reports in news media, and as to the truth of which the person has formed no opinion, shall not disqualify the person to serve as a juror on such cause, if the person states under oath that he or she can fully and impartially render a verdict in accordance with the law and the evidence and the court is satisfied as to the truth of such statement.

Source: Laws 1915, c. 248, § 12, p. 573; Laws 1921, c. 113, § 2, p. 394; C.S.1922, § 9106; C.S.1929, § 20-1636; Laws 1939, c. 18, § 18, p. 110; C.S.Supp.,1941, § 20-1636; Laws 1943, c. 45, § 3, p. 193; R.S.1943, § 25-1636; Laws 1953, c. 72, § 15, p. 236; R.S.1943, (2016), § 25-1636; Laws 2020, LB387, § 9.

Operative date January 1, 2021.

Cross References

For qualifications of jurors, see section 25-1650.

25-1653 Jury list; key number; determination; record.

(1) The jury commissioner, at such times as may be necessary or as he or she may be ordered to do so by the district judge, shall draw a number to be known as a key number. The drawing of a key number shall be done in a manner which will ensure that the number drawn is the result of chance. The key number shall be drawn from among the numbers one to ten. Except as otherwise provided in this section, only one key number need be drawn.

(2) In a county with a population of less than three thousand inhabitants, the jury commissioner shall draw two key numbers or such larger number of key numbers as the district judge or judges may order instead of only one.

(3) In a county with a population of three thousand inhabitants or more, where experience demonstrates that the use of only one key number does not produce a list of names of sufficient number to make the system of practical

use, the district judge or judges may, in their discretion, order the selecting of two key numbers.

(4) The jury commissioner shall make a record of the manner in which the key number or numbers were drawn and the date and the hour of the drawing, the same to be certified by the jury commissioner, and such records shall be entered upon the record of the court.

Source: Laws 1915, c. 248, § 3, p. 569; C.S.1922, § 9097; C.S.1929, § 20-1627; R.S.1943, § 25-1627; Laws 1953, c. 72, § 8(1), p. 228; Laws 1977, LB 283, § 1; Laws 1979, LB 234, § 7; R.S.1943, (2016), § 25-1627; Laws 2020, LB387, § 10.
Operative date January 1, 2021.

25-1654 Combined list; master key list; how produced.

(1) Each December, the Department of Motor Vehicles shall make available to each jury commissioner a list in magnetic, optical, digital, or other electronic format mutually agreed to by the jury commissioner and the department containing the names, dates of birth, addresses, and motor vehicle operator license numbers or state identification card numbers of all licensed motor vehicle operators and state identification card holders nineteen years of age or older in the county. If a jury commissioner requests similar lists at other times from the department, the cost of processing such lists shall be paid by the county which the requesting jury commissioner serves. Upon request of the jury commissioner, the election commissioner or county clerk having charge of the election records shall furnish to the jury commissioner a complete list of the names, dates of birth, addresses, and motor vehicle operator license numbers or state identification card numbers of all registered voters nineteen years of age or older in the county.

(2) When required pursuant to subsection (3) of this section or when otherwise necessary or as directed by the judge or judges, the jury commissioner shall create a combined list by merging the separate lists described in subsection (1) of this section and reducing any duplication to the best of his or her ability.

(3) In counties having a population of seven thousand inhabitants or more, the jury commissioner shall produce a combined list at least once each calendar year. In counties having a population of three thousand inhabitants but less than seven thousand inhabitants, the jury commissioner shall produce a combined list at least once every two calendar years. In counties having a population of less than three thousand inhabitants, the jury commissioner shall produce a combined list at least once every five calendar years.

(4) The jury commissioner shall then create a master key list by selecting from the combined list the name of the person whose numerical order on such list corresponds with the key number and each successive tenth name thereafter. The jury commissioner shall certify that the master key list has been made in accordance with the Jury Selection Act.

(5) Any unintentional duplication of names on a combined list or master key list shall not be grounds for quashing any panel or jury list pursuant to section 25-1678 or for the disqualification of any juror.

Source: Laws 1915, c. 248, § 4, p. 569; C.S.1922, § 9098; C.S.1929, § 20-1628; R.S.1943, § 25-1628; Laws 1957, c. 88, § 1, p. 337;

Laws 1971, LB 11, § 1; Laws 1985, LB 113, § 2; Laws 1988, LB 111, § 1; Laws 1989, LB 82, § 1; Laws 2003, LB 19, § 5; Laws 2005, LB 402, § 1; Laws 2009, LB35, § 10; Laws 2010, LB712, § 3; R.S.1943, (2016), § 25-1628; Laws 2020, LB387, § 11.
Operative date January 1, 2021.

25-1655 Potential jurors; how selected.

(1) Prior to the jury term or at any time during the jury term, the jury commissioner may draw potential jurors from the master key list for service on petit jury panels that will be needed throughout the jury term. The jury commissioner shall draw such number of potential jurors from the master key list as the judge or judges direct.

(2) In drawing the names of potential jurors, the jury commissioner may use a manual jury selection process or a jury management system. The jury commissioner shall investigate the potential jurors so drawn pursuant to the two-step qualifying and summoning system or the one-step qualifying and summoning system.

(3)(a) If the jury commissioner uses the two-step qualifying and summoning system, he or she shall deliver to each potential juror a juror qualification form pursuant to section 25-1657.

(b) If the jury commissioner uses the one-step qualifying and summoning system, he or she shall deliver to each potential juror a juror qualification form pursuant to section 25-1657 and shall serve the potential juror with a summons pursuant to section 25-1660.

Source: Laws 2020, LB387, § 12.

Operative date January 1, 2021.

25-1656 Petit jurors; how selected; summons or notice to report.

(1) Unless the judge or judges order that no jury be drawn, the jury commissioner shall draw petit jurors for a regular jury panel pursuant to this section.

(2) If the jury commissioner has previously drawn and investigated potential jurors for service during the jury term as provided in section 25-1655, the jury commissioner shall draw by chance the names of thirty such qualified jurors, or such other number as the judge or judges may otherwise direct, for each judge sitting with a jury, as petit jurors for such regular jury panel.

(3) If the jury commissioner has not previously drawn and investigated potential jurors for service during the jury term as provided in section 25-1655, the jury commissioner shall draw and investigate potential jurors from the master key list in the same manner as provided in section 25-1655. The jury commissioner shall draw and investigate such number of potential jurors as the jury commissioner deems necessary to arrive at a list of thirty qualified jurors or such other number of qualified jurors as the judge or judges shall direct for each judge sitting with a jury.

(4) After drawing the names pursuant to subsection (2) or (3) of this section, the jury commissioner shall:

(a) Serve a summons pursuant to section 25-1660 on each person whose name was drawn if the jury commissioner uses the two-step qualifying and summoning system; or

(b) If the jury commissioner has not already done so in the summons or by another method of notification, notify each person whose name was drawn of the date and time to report for jury service if the jury commissioner uses the one-step qualifying and summoning system.

Source: Laws 1980, LB 733, § 5; Laws 1983, LB 329, § 1; Laws 1984, LB 13, § 39; R.S.1943, (2016), § 25-1641; Laws 2020, LB387, § 13.
Operative date January 1, 2021.

25-1657 Juror qualification form; potential juror; complete; return; when.

(1) Except as provided in subsection (2) of this section, the jury commissioner shall deliver a juror qualification form to each potential juror drawn for jury service. The delivery may be by first-class mail or personal service or through a jury management system. The jury commissioner shall include instructions to complete and return the form to the jury commissioner within ten days after its receipt. The form may be returned to the jury commissioner by mail or through a jury management system.

(2)(a) In lieu of the juror qualification form delivery process described in subsection (1) of this section, a jury commissioner may send to a potential juror a notice or summons which includes instructions to complete a juror qualification form through a jury management system. The notice or summons may be sent by first-class mail or personal service or through a jury management system. The jury commissioner shall include instructions to complete and submit the juror qualification form within ten days after receipt of the notice or summons.

(b) If a potential juror fails to complete the qualification form as instructed within such ten days, the jury commissioner shall deliver to such potential juror, by first-class mail or personal service, a revised notice or summons and juror qualification form with instructions to complete and return the form to the jury commissioner within ten days after its receipt.

(3) The juror qualification form shall be in the form prescribed by the Supreme Court. Notarization of the juror qualification form shall not be required. If the potential juror is unable to complete the form, another person may do it for the potential juror and shall indicate that such other person has done so and the reason therefor.

(4) If it appears that there is an omission, ambiguity, or error in a returned form, the jury commissioner shall again send the form with instructions to the potential juror to make the necessary addition, clarification, or correction and to return the form to the jury commissioner within ten days after its second receipt.

Source: Laws 1979, LB 234, § 12; Laws 2005, LB 105, § 1; R.S.1943, (2016), § 25-1629.01; Laws 2020, LB387, § 14.
Operative date January 1, 2021.

25-1658 Juror qualification form; failure to return; effect; contempt of court.

(1) Any potential juror who fails to return a completed juror qualification form as instructed shall be directed by the jury commissioner to appear before him or her to fill out the juror qualification form. At the time of the potential juror's appearance for jury service or at the time of any interview before the court or jury commissioner, any potential juror may be required to fill out

another juror qualification form, at which time the potential juror may be questioned with regard to his or her responses to questions contained on the form and grounds for his or her excuse or disqualification. Any information thus acquired by the court or jury commissioner shall be noted on the juror qualification form.

(2) Any person who knowingly fails to complete and return or who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror shall be guilty of contempt of court.

Source: Laws 1979, LB 234, § 13; R.S.1943, (2016), § 25-1629.02; Laws 2020, LB387, § 15.

Operative date January 1, 2021.

25-1659 Master key list; juror qualification form; review; names stricken.

(1) If the jury commissioner finds, after reviewing a completed juror qualification form, that a potential juror does not possess the qualifications of a juror as set forth in section 25-1650 or is excluded by the terms of section 25-1650, the jury commissioner shall strike such potential juror's name from the master key list and make a record of each name stricken, which record shall be kept in the jury commissioner's office subject to inspection by the court and attorneys of record in cases triable to a jury pending before the court, under such rules as the court may prescribe.

(2) Any person entitled to access to the list of names stricken may make a request to the judge of the district court, in accordance with section 25-1673, for an explanation of the reasons a name has been stricken. If the judge is satisfied that such request is made in good faith and in accordance with section 25-1673, the judge shall direct the jury commissioner to appear before the judge at chambers and, in the presence of the requesting person, state his or her reasons for striking such name.

Source: Laws 1915, c. 248, § 5, p. 570; C.S.1922, § 9099; C.S.1929, § 20-1629; Laws 1939, c. 18, § 14, p. 106; C.S.Supp.,1941, § 20-1629; R.S.1943, § 25-1629; Laws 1953, c. 7, § 1, p. 221; Laws 1953, c. 72, § 9, p. 229; Laws 1955, c. 9, § 4, p. 266; Laws 1977, LB 283, § 2; Laws 1979, LB 234, § 9; Laws 1985, LB 113, § 3; R.S.1943, (2016), § 25-1629; Laws 2020, LB387, § 16.

Operative date January 1, 2021.

25-1660 Jurors; how summoned; notice; deadlines, applicability.

(1) The summons of grand and petit jurors for the courts of this state shall be served by the jury commissioner, the clerk of such court, or any other person authorized by the court by delivering such summons by first-class mail or personal service or through a jury management system to the person whose name has been drawn.

(2)(a) If the jury commissioner uses the two-step qualifying and summoning system, the summons shall be delivered not less than ten days before the day such juror is to appear as a juror in such court.

(b) If the jury commissioner uses the one-step qualifying and summoning system, the summons shall be delivered:

(i) Not less than ten days before the first day of the jury term, if the jury commissioner is summoning jurors for service throughout the jury term; or

(ii) Not less than ten days before the day such juror is to appear as a juror in such court, if the jury commissioner is summoning a juror for service on a specific jury panel.

(c) The deadlines in this subsection shall not apply to summons delivered to extra jurors pursuant to section 25-1665 or tales jurors pursuant to section 25-1666. Summons to such jurors shall be delivered at the earliest possible time under the circumstances and as directed by the judge or judges.

(3)(a) If the jury commissioner uses the two-step qualifying and summoning system, a summons sent under this section shall include the day, time, place, and name of the court where the juror is to report for jury service.

(b) If the jury commissioner uses the one-step qualifying and summoning system, a summons sent under this section shall include such details as to the day, time, place, and name of the court where the juror is to report for jury service as are known at the time the summons is sent along with additional instructions regarding the manner in which the juror shall contact the court or will be notified by the court of any additional details.

Source: R.S.1867, Code §§ 661, 662, p. 510; Laws 1885, c. 97, § 1, p. 381; R.S.1913, § 8141; Laws 1915, c. 148, § 1, p. 318; C.S.1922, § 9076; C.S.1929, § 20-1606; R.S.1943, § 25-1606; Laws 1953, c. 72, § 3, p. 225; Laws 1957, c. 242, § 18, p. 831; Laws 1982, LB 677, § 1; R.S.1943, (2016), § 25-1606; Laws 2020, LB387, § 17. Operative date January 1, 2021.

25-1661 Jurors; appearance; failure to appear or serve without good cause; contempt of court.

(1) Each grand juror and petit juror summoned shall appear before the court on the day and at the hour specified in the summons or as further directed by the court.

(2) Any person summoned for jury service who fails to appear or to complete jury service as directed may be ordered by the court to appear forthwith and show cause for such failure to comply with the summons. If such person fails to show good cause for noncompliance with the summons, he or she shall be guilty of contempt of court.

(3) No person shall be guilty of contempt of court under this section for failing to respond to a summons sent:

(a) By first-class mail, if sent pursuant to a one-step qualifying and summoning system, and if the person has (i) returned a juror qualification form and the jury commissioner has determined that such person is not qualified; (ii) been excused from jury service; or (iii) had his or her jury service postponed; or

(b) Through a jury management system.

Source: R.S.1867, Code § 663, p. 511; R.S.1913, § 8142; C.S.1922, § 9077; C.S.1929, § 20-1607; R.S.1943, (2016), § 25-1607; Laws 2020, LB387, § 18.

Operative date January 1, 2021.

25-1662 Petit jury for subsequent periods; how drawn; how notified.

Subsequent panels of petit jurors shall be called as the judge or judges may determine during the jury term. If it is determined that a subsequent panel or panels are necessary, the judge or judges, as the case may be, shall order the

jury commissioner to draw by chance such number of potential jurors as such judge or judges shall direct as petit jurors for such subsequent jury panel. The persons so drawn shall be notified or summoned the same as those drawn for the regular jury panel under section 25-1656.

Source: Laws 1915, c. 248, § 8, p. 571; C.S.1922, § 9102; C.S.1929, § 20-1632; R.S.1943, § 25-1632; Laws 1953, c. 71, § 1, p. 222; Laws 1953, c. 72, § 11(1), p. 231; R.S.1943, (2016), § 25-1632; Laws 2020, LB387, § 19.

Operative date January 1, 2021.

25-1663 Petit jury; examination by judge; excess jurors.

The judge shall examine all jurors who appear for jury service. If, after all excuses have been allowed, there remain more than twenty-four petit jurors for each judge sitting with a jury who are qualified and not excluded by the terms of section 25-1650, the court may excuse by lot such number in excess of twenty-four as the court may see fit. Those jurors who have been discharged in excess of twenty-four for each judge, but are qualified, shall not be discharged permanently, but shall remain subject to be resummoned for jury service upon the same jury panel.

Source: Laws 1915, c. 248, § 7, p. 570; C.S.1922, § 9101; C.S.1929, § 20-1631; Laws 1939, c. 18, § 16, p. 107; C.S.Supp.,1941, § 20-1631; R.S.1943, § 25-1631; Laws 1953, c. 72, § 10(4), p. 231; Laws 1979, LB 234, § 10; R.S.1943, (2016), § 25-1631.03; Laws 2020, LB387, § 20.

Operative date January 1, 2021.

25-1664 Petit jury; special jury panel in criminal cases.

Whenever there is pending in the criminal court any case in which the defendant is charged with a felony and the judge holding the court is convinced from the circumstances of the case that a jury cannot be obtained from the regular jury panel to try the case, the judge may, in his or her discretion, prior to the day fixed for the trial of the case, direct the jury commissioner to draw, in the same manner as described in section 25-1656, such number of names as the judge or judges may direct as a special jury panel from which a jury may be selected to try such case, which jury panel shall be summoned for such day in the same manner as the regular jury panel.

Source: Laws 1915, c. 248, § 8, p. 571; C.S.1922, § 9102; C.S.1929, § 20-1632; R.S.1943, § 25-1632; Laws 1953, c. 72, § 11(2), p. 232; R.S.1943, (2016), § 25-1632.01; Laws 2020, LB387, § 21.

Operative date January 1, 2021.

25-1665 Petit jury; extra jurors to complete jury panel; tales jurors.

(1) If for any reason it appears to the judge that the jury panel of petit jurors will not be adequate at any time during the jury term, the jury commissioner shall, when ordered by the judge, draw, in the same manner as the drawing of a regular jury panel under section 25-1656, such number of potential jurors as the judge directs to fill such jury panel or as extra jurors, and those drawn shall be notified and summoned in the same manner as described in section 25-1656 or as the court may direct. This shall also apply to the selection of tales jurors for particular causes after the regular jury panel is exhausted.

(2) Each person summoned under subsection (1) of this section shall forthwith appear before the court and if qualified shall serve on the jury panel unless such person is excused from service or lawfully challenged. If necessary, jurors shall continue to be so drawn from time to time until the jury panel is filled.

Source: Laws 1915, c. 248, § 10, p. 572; C.S.1922, § 9104; C.S.1929, § 20-1634; R.S.1943, § 25-1634; Laws 1953, c. 72, § 13(1), p. 234; R.S.1943, (2016), § 25-1634; Laws 2020, LB387, § 22. Operative date January 1, 2021.

25-1666 Petit jury; tales jurors; how chosen.

(1) When it is deemed necessary, the judge shall direct the jury commissioner or the sheriff of the county or such other person as may be designated by the judge to summon from the bystanders or the body of the county a sufficient number of persons having the qualifications of jurors, as provided in section 25-1650, to serve as tales jurors to fill the jury panel, in order that a jury may be obtained.

(2) The persons summoned under subsection (1) of this section who are not chosen to serve on the jury shall be discharged from the jury panel as soon as the judge so determines. Such persons shall not thereafter be disqualified from service as jurors when regularly drawn from the jury list pursuant to the Jury Selection Act unless excused by the judge.

Source: Laws 1915, c. 248, § 10, p. 572; C.S.1922, § 9104; C.S.1929, § 20-1634; R.S.1943, § 25-1634; Laws 1953, c. 72, § 13(3), p. 235; R.S.1943, (2016), § 25-1634.02; Laws 2020, LB387, § 23. Operative date January 1, 2021.

25-1667 Petit jury; postponement of service.

The court may postpone service of a petit juror from one jury panel to a specific future jury panel. A written form may be completed for each such juror, giving the juror's name and address and the reason for the postponement and bearing the signature of the district judge. Such form shall be entered upon the record of the court. The names of jurors transferred from one jury panel to another shall be added to the names drawn for a particular jury panel as drawn under section 25-1662.

Source: Laws 1915, c. 248, § 10, p. 572; C.S.1922, § 9104; C.S.1929, § 20-1634; R.S.1943, § 25-1634; Laws 1953, c. 72, § 13(2), p. 235; Laws 1965, c. 124, § 1, p. 461; R.S.1943, (2016), § 25-1634.01; Laws 2020, LB387, § 24. Operative date January 1, 2021.

25-1668 Grand jury; potential jurors; how and when drawn; juror qualification form.

(1) Unless the judge or judges order that no grand jury be drawn, after creating the master key list under section 25-1654, the jury commissioner shall draw potential jurors from the master key list for service on grand juries for the jury term in the manner and number provided in this section or as the judge or judges otherwise direct. In drawing names, the jury commissioner may use a manual jury selection process or a jury management system.

(2) If the judge or judges initially order that no grand jury be drawn, such judge or judges may at any time thereafter order the drawing of a grand jury.

(3) The jury commissioner shall draw such number of potential jurors for grand jury service:

(a) As the jury commissioner deems necessary to arrive at a list of eighty persons who possess the qualifications of jurors set forth in section 25-1650; or

(b) As the judge or judges may otherwise direct.

(4)(a) If the jury commissioner uses the two-step qualifying and summoning system, he or she shall deliver to each potential juror a juror qualification form pursuant to section 25-1657.

(b) If the jury commissioner uses the one-step qualifying and summoning system, he or she shall deliver to each potential juror a juror qualification form pursuant to section 25-1657 and shall serve the potential juror with a summons pursuant to section 25-1660.

Source: Laws 2020, LB387, § 25.

Operative date January 1, 2021.

25-1669 Grand jury; how drawn; alternate jurors.

(1) When the law requires that a grand jury be empaneled or when ordered by the judge or judges, the jury commissioner shall draw grand jurors pursuant to this section.

(2) The jury commissioner shall draw by chance forty names, or such other number as directed by the judge or judges, of persons the jury commissioner has investigated and determined to be qualified pursuant to section 25-1668. The jury commissioner shall then prepare a list of such names. Such list shall also contain the place of residence and occupation of each person on the list.

(3) The jury commissioner shall notify or summon persons selected under subsection (2) of this section as directed by the judge or judges.

(4) The list of names drawn pursuant to subsection (2) of this section shall then be turned over by the jury commissioner to a board to consist of the jury commissioner, the presiding judge of the district court, and one other person whom the presiding judge shall designate. The presiding judge shall be the chairperson. Such board shall select from such list the names of sixteen persons to serve as grand jurors and the names of three additional persons to serve as alternate jurors.

(5) The alternate jurors shall sit with the grand jury and participate in all investigative proceedings to the same extent as the regular grand jurors. Alternate grand jurors shall be permitted to question witnesses, review evidence, and participate in all discussions of the grand jury which occur prior to the conclusion of presentation of evidence. When the grand jury has determined that no additional evidence is necessary for its investigation, the alternate grand jurors shall be separated from the regular grand jurors and shall not participate in any further discussions, deliberations, or voting of the grand jury unless one or more of the regular grand jurors is or are excused because of illness or other sufficient reason. Such alternate jurors shall fill vacancies in the order of their selection.

Source: Laws 1915, c. 248, § 9, p. 572; Laws 1921, c. 113, § 1, p. 393; C.S.1922, § 9103; C.S.1929, § 20-1633; Laws 1939, c. 18, § 17, p.

108; C.S.Supp.,1941, § 20-1633; R.S.1943, § 25-1633; Laws 1953, c. 72, § 12(1), p. 232; Laws 1999, LB 72, § 1; R.S.1943, (2016), § 25-1633; Laws 2020, LB387, § 26.
Operative date January 1, 2021.

25-1670 Juror; serve; limitations.

In any five-year period no person shall be required to:

(1) Serve as a petit juror for more than four calendar weeks, except if necessary to complete service in a particular case;

(2) Serve on more than one grand jury; or

(3) Serve as both a grand and petit juror.

Source: Laws 1979, LB 234, § 16; Laws 1980, LB 733, § 3; R.S.1943, (2016), § 25-1639; Laws 2020, LB387, § 27.

Operative date January 1, 2021.

25-1671 County court; advance jury selection; when authorized.

All parties to an action which is filed with a county court of this state may agree 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 court.

Source: Laws 1996, LB 1249, § 1; R.S.1943, (2016), § 25-1631; Laws 2020, LB387, § 28.

Operative date January 1, 2021.

25-1672 Jury trial; notice to jury commissioner; waiver.

The clerk magistrate shall provide written notice of a jury trial to the jury commissioner not less than thirty days prior to trial. The notice shall set forth the number of petit jurors to be summoned and the day and hour the petit jurors are to appear before the court. The requirements of this section may be waived upon an agreement between the jury commissioner and the clerk magistrate or judicial administrator.

Source: Laws 2020, LB387, § 29.

Operative date January 1, 2021.

25-1673 Jurors; disclosing names; when permissible; penalty; access to juror qualification forms.

(1) It shall be unlawful for a jury commissioner, any clerk or deputy thereof, or any person who may obtain access to any record showing the names of persons drawn to serve as grand or petit jurors to disclose to any person, except to other officers in carrying out official duties or as provided in the Jury Selection Act, the name of any person so drawn or to permit any person to examine such record or to make a list of such names, except under order of the court. The application for such an order shall be filed in the form of a motion in the office of the clerk of the district court, containing the signature and residence of the applicant or his or her attorney and stating all the grounds on which the request for such order is based. Such order shall not be made except for good cause shown in open court and it shall be spread upon the record of the court. Any person violating any of the provisions of this section shall be guilty of a Class IV felony. Notwithstanding the foregoing provisions of this

section, the judge or judges in any district may, in his, her, or their discretion, provide by express order for the disclosure of the names of persons drawn for actual service as grand or petit jurors.

(2) Notwithstanding subsection (1) 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 juror qualification forms 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 1915, c. 248, § 11, p. 573; C.S.1922, § 9105; C.S.1929, § 20-1635; R.S.1943, § 25-1635; Laws 1949, c. 56, § 1, p. 167; Laws 1953, c. 72, § 14, p. 235; Laws 1977, LB 40, § 102; Laws 2005, LB 105, § 2; Laws 2018, LB193, § 31; R.S.Supp.,2018, § 25-1635; Laws 2020, LB387, § 30.
Operative date January 1, 2021.

25-1674 Employee; penalized due to jury service; prohibited; penalty.

Any person who is summoned to serve on jury duty shall not be subject to discharge from employment, loss of pay, loss of sick leave, loss of vacation time, or any other form of penalty as a result of his or her absence from employment due to such jury duty upon giving reasonable notice to his or her employer of such summons. Any person who is summoned to serve on jury duty shall be excused upon request from any shift work for those days required to serve as a juror without loss of pay. No employer shall subject an employee to discharge, loss of pay, loss of sick leave, loss of vacation time, or any other form of penalty on account of his or her absence from employment by reason of jury duty, except that an employer may reduce the pay of an employee by an amount equal to any compensation, other than expenses, paid by the court for jury duty. Any person violating this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1979, LB 234, § 17; Laws 1980, LB 733, § 4; R.S.1943, (2016), § 25-1640; Laws 2020, LB387, § 31.
Operative date January 1, 2021.

25-1675 Act; neglect or failure by officers; contempt of court.

If any jury commissioner or deputy jury commissioner, sheriff or deputy sheriff, or person having charge of election records neglects or fails to perform the duties imposed by the Jury Selection Act, the person so offending shall be guilty of contempt of court.

Source: R.S.1867, Code § 667, p. 511; R.S.1913, § 8146; C.S.1922, § 9081; C.S.1929, § 20-1611; R.S.1943, § 25-1611; Laws 1953, c. 72, § 5, p. 226; Laws 1979, LB 234, § 5; R.S.1943, (2016), § 25-1611; Laws 2020, LB387, § 32.
Operative date January 1, 2021.

25-1676 Jury list; tampering; solicitation; penalty.

If any person places a name or asks to have a name placed on any list of potential jurors for service on any grand or petit jury in a manner not

authorized by the Jury Selection Act, such person shall be guilty of a Class IV felony.

Source: Laws 1915, c. 248, § 6, p. 570; C.S.1922, § 1900; C.S.1929, § 20-1630; Laws 1939, c. 18, § 15, p. 107; C.S.Supp.,1941, § 20-1630; R.S.1943, § 25-1630; Laws 1977, LB 40, § 101; R.S. 1943, (2016), § 25-1630; Laws 2020, LB387, § 33.
Operative date January 1, 2021.

25-1677 Packing juries; solicitation of jury service; penalties.

(1) If a sheriff or other officer corruptly or through favor or ill will summons a juror with the intent that such juror shall find a verdict for or against either party, or summons a grand juror from like motives with the intent that such grand juror shall or shall not find an indictment or presentment against any particular individual, the sheriff or other officer shall be fined not exceeding five hundred dollars, shall forfeit his or her office, and shall be forever disqualified from holding any office in this state.

(2) Any person who seeks the position of juror or who asks any attorney or other officer of the court or any other person or officer in any manner charged with the duty of selecting the jury to secure or procure his or her selection as a juror shall be guilty of contempt of court, shall be fined not exceeding twenty dollars, and shall thereby be disqualified from serving as a juror for that jury term.

(3) Any attorney or party to a suit pending for trial at that jury term who requests or solicits the placing of any person upon a jury, or upon any list of potential jurors for service on any grand or petit jury, shall be guilty of contempt of court and be fined not exceeding one hundred dollars, and the person so sought to be put upon the jury or list shall be disqualified to serve as a juror for that jury term.

Source: R.S.1867, Code § 668, p. 512; Laws 1901, c. 83, § 2, p. 477; R.S.1913, § 8147; C.S.1922, § 9082; C.S.1929, § 20-1612; R.S. 1943, § 25-1612; R.S.1943, (2016), § 25-1612; Laws 2020, LB387, § 34.
Operative date January 1, 2021.

25-1678 Juries; proceedings stayed; jury panel or list quashed; grounds; procedures; new list, order for.

(1) A party may move to stay the proceedings, to quash the entire jury panel or jury list, or for other appropriate relief on the ground of substantial failure to comply with the Jury Selection Act in selecting the grand or petit jury. Such motion shall be made within seven days after the moving party discovered or by the exercise of diligence could have discovered the grounds for such motion, and in any event before the petit jury is sworn to try the case.

(2) Upon a motion filed under subsection (1) of this section containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with the Jury Selection Act, the moving party is entitled to present, in support of the motion, the testimony of the jury commissioner or the clerk, any relevant records and papers not public or otherwise available which were used by the jury commissioner or the clerk, and any other relevant evidence. If the court determines that in selecting either a grand jury or a petit jury there has been a substantial failure to comply with the Jury Selection Act, the court shall

stay the proceedings pending the selection of the jury in conformity with the act, quash an entire jury panel or jury list, or grant other appropriate relief.

(3) The procedures prescribed by this section are the exclusive means by which the state, a person accused of a crime, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with the Jury Selection Act.

(4) The contents of any records or papers used by the jury commissioner or the clerk in connection with the selection process and not made public under the Jury Selection Act shall not be disclosed, except in connection with the preparation or presentation of a motion under subsection (1) of this section, until after all persons on the jury list have been discharged. The parties in a case may inspect, reproduce, and copy the records or papers at all reasonable times during the preparation and pendency of a motion under subsection (1) of this section.

(5) Whenever the entire jury list is quashed, the court shall make an order directing the jury commissioner to draw a new key number in the manner provided in section 25-1653 and prepare a new master key list in the manner provided in section 25-1654. The jury commissioner shall qualify and summon jurors from the new master key list as provided in the Jury Selection Act.

Source: Laws 1915, c. 248, § 13, p. 577; C.S.1922, § 9108; C.S.1929, § 20-1637; R.S.1943, § 25-1637; Laws 1959, c. 102, § 3, p. 425; Laws 1979, LB 234, § 11; Laws 1985, LB 113, § 4; R.S.1943, (2016), § 25-1637; Laws 2020, LB387, § 35.

Operative date January 1, 2021.

ARTICLE 18

EXPENSES AND ATTORNEY'S FEES

Section

25-1801. Lawsuit of four thousand dollars or less; recovery; costs; interest; attorney's fees.

25-1801 Lawsuit of four thousand dollars or less; recovery; costs; interest; attorney's fees.

(1) On any lawsuit of four thousand dollars or less, regardless of whether the claims are liquidated or assigned, the plaintiff may recover costs, interest, and attorney's fees in connection with each claim as provided in this section. If, at the expiration of ninety days after each claim accrued, the claim or claims have not been paid or satisfied, the plaintiff may file a lawsuit for payment of the claim or claims. If full payment of each claim is made to the plaintiff by or on behalf of the defendant after the filing of the lawsuit, but before judgment is taken, except as otherwise agreed in writing by the plaintiff, the plaintiff shall be entitled to receive the costs of the lawsuit whether by voluntary payment or judgment. If the plaintiff secures a judgment thereon, the plaintiff shall be entitled to recover:

(a) The full amount of such judgment and all costs of the lawsuit thereon;

(b) Interest at the rate of six percent per annum. Such interest shall apply to the amount of the total claim beginning thirty days after the date each claim accrued, regardless of assignment, until paid in full; and

(c) If the plaintiff has an attorney retained, employed, or otherwise working in connection with the case, an amount for attorney's fees as provided in this section.

(2) If the cause is taken to an appellate court and the plaintiff recovers a judgment thereon, the appellate court shall tax as costs in the action, to be paid to the plaintiff, an additional amount for attorney's fees in such appellate court as provided in this section, except that if the plaintiff fails to recover a judgment in excess of the amount that may have been tendered by the defendant, then the plaintiff shall not recover the attorney's fees provided by this section.

(3) Attorney's fees shall be assessed by the court in a reasonable amount, but shall in no event be less than ten dollars when the judgment is fifty dollars or less, and when the judgment is over fifty dollars up to four thousand dollars, the attorney's fee shall be ten dollars plus ten percent of the judgment in excess of fifty dollars.

(4) For purposes of this section, the date that each claim accrued means the date the services, goods, materials, labor, or money were provided, or the date the charges were incurred by the debtor, unless some different time period is expressly set forth in a written agreement between the parties.

(5) This section shall apply to original creditors as well as their assignees and successors.

(6) This section does not apply to a cause of action alleging personal injury, regardless of the legal theory asserted.

Source: Laws 1919, c. 191, § 1, p. 865; C.S.1922, § 9126; C.S.1929, § 20-1801; R.S.1943, § 25-1801; Laws 1951, c. 70, § 1, p. 225; Laws 1955, c. 92, § 1, p. 269; Laws 1967, c. 150, § 1, p. 446; Laws 1993, LB 121, § 171; Laws 2009, LB35, § 13; Laws 2018, LB710, § 1.

Cross References

For interest on unsettled accounts, see section 45-104.

ARTICLE 19

REVERSAL OR MODIFICATION OF JUDGMENTS AND ORDERS BY APPELLATE COURTS

(a) REVIEW ON PETITION IN ERROR

Section

25-1902. Final order, defined; appeal.

(b) REVIEW ON APPEAL

25-1912. Appeal; civil and criminal actions; procedure; notice of appeal; docketing fee; filing of transcript.

(a) REVIEW ON PETITION IN ERROR

25-1902 Final order, defined; appeal.

(1) The following are final orders which may be vacated, modified, or reversed:

(a) An order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment;

- (b) An order affecting a substantial right made during a special proceeding;
 - (c) An order affecting a substantial right made on summary application in an action after a judgment is entered; and
 - (d) An order denying a motion for summary judgment when such motion is based on the assertion of sovereign immunity or the immunity of a government official.
- (2) An order under subdivision (1)(d) of this section may be appealed pursuant to section 25-1912 within thirty days after the entry of such order or within thirty days after the entry of judgment.

Source: R.S.1867, Code § 581, p. 496; R.S.1913, § 8176; C.S.1922, § 9128; C.S.1929, § 20-1902; R.S.1943, § 25-1902; Laws 2019, LB179, § 1.

(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. 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 file 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; Laws 2018, LB193, § 32.

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.

(p) MISCELLANEOUS

25-21,186. Emergency care at scene of emergency; persons relieved of civil liability, when.

(s) SHOPLIFTING

25-21,194. Repealed. Laws 2019, LB71, § 3.

(v) ACTIONS IN WHICH THE STATE OR A STATE AGENCY IS A PARTY

25-21,212. Judgment against claimant; transmitted to other counties; how collected.

(w) FORCIBLE ENTRY AND DETAINER

25-21,228. Forcible entry and detainer; verdict; entry; judgment.

Section

(hh) CHANGE OF NAME

25-21,271. Change of name; persons; procedure; clerk of the district court; duty.

(ll) 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.

(qq) HUMAN TRAFFICKING VICTIMS CIVIL REMEDY ACT

25-21,299. Civil action authorized; recovery; attorney's fees and costs; order of attachment.

(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.

(p) MISCELLANEOUS

25-21,186 Emergency care at scene of emergency; persons relieved of civil liability, when.

(1) No person who renders emergency care at the scene of an accident or other emergency gratuitously, shall be held liable for any civil damages as a result of any act or omission by such person in rendering the emergency care or as a result of any act or failure to act to provide or arrange for medical treatment or care for the injured person.

(2) For purposes of this section, rendering emergency care at the scene of an accident or other emergency includes entering a motor vehicle to remove a child when entering the vehicle and removing the child is necessary to avoid immediate harm to the child.

Source: Laws 1961, c. 110, § 1, p. 349; Laws 1971, LB 458, § 1; R.S.1943, (1979), § 25-1152; Laws 2020, LB832, § 1.
Effective date November 14, 2020.

(s) SHOPLIFTING

25-21,194 Repealed. Laws 2019, LB71, § 3.

(v) ACTIONS IN WHICH THE STATE OR A STATE AGENCY IS A PARTY

25-21,212 Judgment against claimant; transmitted to other counties; how collected.

In any action in which a judgment is rendered in any sum, or for costs, against the claimant, the clerk of the court in which such judgment is rendered shall make and transmit a certified copy thereof on application of the Attorney General or other counsel on behalf of the state, to the clerk of the district court of any county within the state and the same shall thereupon be filed and recorded in such court and become and be a judgment thereof. All judgments against the claimant or plaintiff shall be collected by execution as other judgments in the district courts.

Source: Laws 1877, § 13, p. 23; R.S.1913, § 1189; C.S.1922, § 1111; C.S.1929, § 27-330; R.S.1943, § 24-330; R.S.1943, (1985), § 24-330; Laws 2018, LB193, § 33.

(w) FORCIBLE ENTRY AND DETAINER

25-21,228 Forcible entry and detainer; verdict; entry; judgment.

The court shall enter the verdict upon the record and shall render such judgment in the action as if the facts authorizing the finding of such verdict had been found to be true by the court.

Source: Laws 1929, c. 82, § 127, p. 311; C.S.1929, § 22-1211; R.S.1943, § 26-1,128; Laws 1972, LB 1032, § 78; R.S.1943, (1985), § 24-578; Laws 2018, LB193, § 34.

(hh) CHANGE OF NAME

25-21,271 Change of name; persons; procedure; clerk of the district court; duty.

(1) Any person desiring to change his or her name shall file a petition in the district court of the county in which such person may be a resident, setting forth (a) that the petitioner has been a bona fide citizen of such county for at least one year prior to the filing of the petition, (b) the address of the petitioner, (c) the date of birth of the petitioner, (d) the cause for which the change of petitioner's name is sought, and (e) the name asked for.

(2) Notice of the filing of the petition shall be published in a newspaper in the county, and if no newspaper is printed in the county, then in a newspaper of general circulation therein. The notice shall be published (a) once a week for four consecutive weeks if the petitioner is nineteen years of age or older at the time the action is filed and (b) once a week for two consecutive weeks if the petitioner is under nineteen years of age at the time the action is filed. In an action involving a petitioner under nineteen years of age who has a noncustodial parent, notice of the filing of the petition shall be sent by certified mail within five days after publication to the noncustodial parent at the address provided to the clerk of the district court pursuant to subsection (1) of section 42-364.13 for the noncustodial parent if he or she has provided an address. The clerk of the district court shall provide the petitioner with the address upon request.

(3) It shall be the duty of the district court, upon being duly satisfied by proof in open court of the truth of the allegations set forth in the petition, that there

exists proper and reasonable cause for changing the name of the petitioner, and that notice of the filing of the petition has been given as required by this section, to order and direct a change of name of such petitioner and that an order for the purpose be entered by the court.

(4) The clerk of the district court shall deliver a copy of any name-change order issued by the court pursuant to this section to the Department of Health and Human Services for use pursuant to sections 28-376 and 28-718 and to the sex offender registration and community notification division of the Nebraska State Patrol for use pursuant to section 29-4004.

Source: Laws 1871, p. 62; R.S.1913, § 5316; C.S.1922, § 4609; C.S.1929, § 61-102; R.S.1943, § 61-102; Laws 1963, c. 367, § 1, p. 1184; Laws 1994, LB 892, § 1; Laws 1995, LB 161, § 1; R.S.1943, (1996), § 61-102; Laws 2010, LB147, § 1; Laws 2018, LB193, § 35.

(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 pharmacist 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.

(qq) HUMAN TRAFFICKING VICTIMS CIVIL REMEDY ACT

25-21,299 Civil action authorized; recovery; attorney's fees and costs; order of attachment.

(1) Any trafficking victim, his or her parent or legal guardian, or personal representative in the event of such victim's death, who suffered or continues to suffer personal or mental injury, death, or any other damages proximately caused by such human trafficking may bring a civil action against any person who knowingly (a) engaged in human trafficking of such victim within this state or (b) aided or assisted in the human trafficking of such victim within this state.

(2) A plaintiff who prevails in a civil action brought pursuant to the Human Trafficking Victims Civil Remedy Act may recover his or her damages proximately caused by the actions of the defendant plus any and all attorney's fees and costs reasonably associated with the civil action.

(3) Damages recoverable pursuant to subsection (2) of this section include all damages otherwise recoverable under the law and include, but are not limited to:

(a) The physical pain and mental suffering the plaintiff has experienced and is reasonably certain to experience in the future;

(b) The reasonable value of the medical, hospital, nursing, and care and supplies reasonably needed by and actually provided to the plaintiff and reasonably certain to be needed and provided in the future;

(c) The reasonable value of transportation, housing, and child care reasonably needed and actually incurred by the plaintiff;

(d) The reasonable value of the plaintiff's labor and services the plaintiff has lost because he or she was a trafficking victim;

(e) The reasonable monetary value of the harm caused by the documentation and circulation of the human trafficking;

(f) The reasonable costs incurred by the plaintiff to relocate away from the defendant or the defendant's associates;

(g) In the event of death, damages available as in other actions for wrongful death; and

(h) The reasonable costs incurred by the plaintiff to participate in the criminal investigation or prosecution or attend criminal proceedings related to trafficking the plaintiff.

(4) In addition to all remedies available under this section, the court may enter an order of attachment pursuant to sections 25-1001 to 25-1010.

Source: Laws 2015, LB294, § 3; Laws 2019, LB519, § 1.

ARTICLE 22

GENERAL PROVISIONS

(b) CLERKS OF COURTS; DUTIES

Section

25-2205.	Case file and record; preservation.
25-2207.	Record of service of summons; entry as evidence.
25-2209.	Clerk of district court; required records enumerated.
25-2210.	Repealed. Laws 2018, LB193, § 97.
25-2211.	Trial docket.
25-2211.01.	Repealed. Laws 2018, LB193, § 97.
25-2211.02.	Repealed. Laws 2018, LB193, § 97.
25-2213.	Clerks of courts of record other than district courts; duties.

(d) MISCELLANEOUS

25-2221. Time; how computed; offices may be closed, when; federal holiday schedule observed; exceptions.

(e) CONSTABLES AND SHERIFFS

25-2234. Sheriff; return of process.

(b) CLERKS OF COURTS; DUTIES

25-2205 Case file and record; preservation.

The clerk of each of the courts shall maintain and preserve a case file and a record of all documents delivered to him or her for that purpose in every action or special proceeding. Retention and disposition of the records shall be determined by the State Records Administrator pursuant to the Records Management Act.

Source: R.S.1867, Code § 884, p. 547; R.S.1913, § 8553; C.S.1922, § 9504; C.S.1929, § 20-2205; R.S.1943, § 25-2205; Laws 2018, LB193, § 36.

Cross References

Records Management Act, see section 84-1220.

25-2207 Record of service of summons; entry as evidence.

The clerk of the court shall, upon the return of every summons served, enter upon the record the name of the defendant or defendants summoned and the day of the service upon each one. The entry shall be evidence of the service of the summons in case of the loss thereof.

Source: R.S.1867, Code § 886, p. 548; R.S.1913, § 8555; C.S.1922, § 9506; C.S.1929, § 20-2207; R.S.1943, § 25-2207; Laws 2018, LB193, § 37.

25-2209 Clerk of district court; required records enumerated.

(1) The clerk of the district court shall keep records, to be maintained on the court's electronic case management system, called the register of actions, the trial docket, the judge's docket notes, the financial record, the general index, the judgment index, and the case file. Retention and disposition of the records shall be determined by the State Records Administrator pursuant to the Records Management Act.

(2) The case file, numbered in chronological order, shall contain the complaint or petition and subsequent pleadings in the case file. The case file may be maintained as an electronic document through the court's electronic case management system, on microfilm, or in a paper volume and disposed of when determined by the State Records Administrator pursuant to the Records Management Act.

(3) For purposes of this section:

(a) Financial record means the financial accounting of the court, including the recording of all money receipted and disbursed by the court and the receipts and disbursements of all money held as an investment;

(b) General index means the alphabetical listing of the names of the parties to the suit, both direct and inverse, with the case number where all proceedings in such action may be found;

(c) Judge's docket notes means the notations of the judge detailing the actions in a court proceeding and the entering of orders and judgments;

(d) Judgment index means the alphabetical listing of all judgment debtors and judgment creditors;

(e) Register of actions means the official court record and summary of the case; and

(f) Trial docket means a list of pending cases as provided in section 25-2211.

Source: R.S.1867, Code § 321, p. 448; G.S.1873, c. 57, § 321, p. 579; R.S.1913, § 8557; C.S.1922, § 9508; C.S.1929, § 20-2209; R.S.1943, § 25-2209; Laws 1971, LB 128, § 1; Laws 1992, LB 1059, § 13; Laws 2011, LB17, § 4; Laws 2018, LB193, § 38.

Cross References

Records Management Act, see section 84-1220.

25-2210 Repealed. Laws 2018, LB193, § 97.

25-2211 Trial docket.

The trial docket shall be available for the court on the first day of each month setting forth each case pending in the order of filing of the complaint to be called for trial. For the purpose of arranging the trial docket, an issue shall be considered as made up when either party is in default of a pleading. If the

defendant fails to answer, the cause for the purpose of this section shall be deemed to be at issue upon questions of fact, but in every such case the plaintiff may move for and take such judgment as he or she is entitled to, on the defendant's default, on or after the day on which the action is set for trial. No witnesses shall be subpoenaed in any case while the cause stands upon issue of law. Whenever the court regards the answer in any case as frivolous and put in for delay only, no leave to answer or reply shall be given unless upon payment of all costs then accrued in the action. When the number of actions filed exceeds three hundred, the judge or judges of the district court for the county may, by rule or order, classify them in such manner as they may deem expedient and cause them to be placed according to such classifications upon different trial dockets and the respective trial dockets may be proceeded with and causes thereon tried, heard, or otherwise disposed of, concurrently by one or more of the judges. Provision may be made by rule of court that issues of fact shall not be for trial at any term when the number of pending actions exceeds three hundred, except upon such previous notice of trial as may be prescribed thereby.

Source: R.S.1867, Code § 323, p. 448; Laws 1887, c. 94, § 1, p. 647; Laws 1899, c. 83, § 1, p. 338; R.S.1913, § 8559; C.S.1922, § 9510; C.S.1929, § 20-2211; R.S.1943, § 25-2211; Laws 1951, c. 74, § 2(1), p. 230; Laws 2002, LB 876, § 54; Laws 2018, LB193, § 39.

25-2211.01 Repealed. Laws 2018, LB193, § 97.

25-2211.02 Repealed. Laws 2018, LB193, § 97.

25-2213 Clerks of courts of record other than district courts; duties.

The provisions of sections 25-2204 to 25-2211 shall, as far as applicable, apply to clerks of other courts of record.

Source: R.S.1867, Code § 888, p. 548; R.S.1913, § 8562; C.S.1922, § 9513; C.S.1929, § 20-2214; R.S.1943, § 25-2213; Laws 1992, LB 1059, § 14; Laws 2018, LB193, § 40.

(d) MISCELLANEOUS

25-2221 Time; how computed; offices may be closed, when; federal holiday schedule observed; exceptions.

Except as may be otherwise more specifically provided, the period of time within which an act is to be done in any action or proceeding shall be computed by excluding the day of the act, event, or default after which the designated period of time begins to run. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a day during which the offices of courts of record may be legally closed as provided in this section, in which event the period shall run until the end of the next day on which the office will be open.

All courts and their offices may be closed on Saturdays, Sundays, days on which a specifically designated court is closed by order of the Chief Justice of the Supreme Court, and these holidays: New Year's Day, January 1; Birthday of Martin Luther King, Jr., the third Monday in January; President's Day, the third Monday in February; Arbor Day, the last Friday in April; Memorial Day, the

last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Indigenous Peoples' Day and Columbus Day, the second Monday in October; Veterans Day, November 11; Thanksgiving Day, the fourth Thursday in November; the day after Thanksgiving; Christmas Day, December 25; and all days declared by law or proclamation of the Governor to be holidays. Such days shall be designated as nonjudicial days. If any such holiday falls on Sunday, the following Monday shall be a holiday. If any such holiday falls on Saturday, the preceding Friday shall be a holiday. Court services shall be available on all other days. If the date designated by the state for observance of any legal holiday pursuant to this section, except Veterans Day, is different from the date of observance of such holiday pursuant to a federal holiday schedule, the federal holiday schedule shall be observed.

Source: R.S.1867, Code § 895, p. 549; R.S.1913, § 8570; C.S.1922, § 9521; C.S.1929, § 20-2222; R.S.1943, § 25-2221; Laws 1959, c. 108, § 1, p. 437; Laws 1967, c. 151, § 1, p. 448; Laws 1969, c. 844, § 1, p. 3179; Laws 1973, LB 34, § 1; Laws 1975, LB 218, § 1; Laws 1978, LB 855, § 1; Laws 1988, LB 821, § 1; Laws 1988, LB 909, § 1; Laws 2002, LB 876, § 55; Laws 2003, LB 760, § 6; Laws 2011, LB669, § 17; Laws 2020, LB848, § 2. Operative date November 14, 2020.

(e) CONSTABLES AND SHERIFFS

25-2234 Sheriff; return of process.

It shall be the duty of every sheriff to make due return of all legal process to him or her directed and by him or her delivered or served by certified or registered mail, at the proper office and on the proper return day thereof, or if the judgment is recorded in the district court, appealed, or stayed, upon which he or she has an execution, on notice thereof, to return the execution, stating thereon such facts.

Source: Laws 1929, c. 82, art. XV, § 173, p. 324; C.S.1929, § 22-1503; Laws 1933, c. 44, § 4, p. 253; C.S.Supp.,1941, § 22-1503; R.S. 1943, § 26-1,174; R.S.1943, (1979), § 26-1,174; Laws 1987, LB 93, § 7; R.S.Supp.,1988, § 24-597; Laws 1992, LB 1059, § 18; Laws 2018, LB193, § 41.

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;

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(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.

**ARTICLE 26
ARBITRATION**

Section
25-2616. Repealed. Laws 2018, LB193, § 97.

25-2616 Repealed. Laws 2018, LB193, § 97.

**ARTICLE 27
PROVISIONS APPLICABLE TO COUNTY COURTS**

(a) MISCELLANEOUS PROCEDURAL PROVISIONS

- Section
25-2704. Summons; pleadings; time for filings; trial date; telephonic or videoconference hearing; authorized.
- 25-2706. County court; certify proceedings to district court; when; avoidance of county court jurisdiction; recovery of costs prohibited.
- 25-2707. Garnishment; amount in excess of jurisdiction of county court; transfer to district court; proceedings certified.

(c) UNCLAIMED FUNDS

- 25-2717. Unclaimed funds; payment to State Treasurer; disposition.

(d) JUDGMENTS

- 25-2721. Judgment; execution; lien on real estate; conditions.

(f) APPEALS

- 25-2728. Appeals; parties; applicability of sections.
- 25-2729. Appeals; procedure.
- 25-2731. Appeal; transcript; contents; clerk; duties.

(g) DOMESTIC RELATIONS MATTERS

- 25-2740. Domestic relations matters; district, county, and separate juvenile courts; jurisdiction; procedure.

(h) EXPEDITED CIVIL ACTIONS

- 25-2741. Act, how cited.
- 25-2742. Civil actions; applicability of act.

§ 25-2704

COURTS; CIVIL PROCEDURE

Section

- 25-2743. Plaintiffs; certification of relief sought; applicability of laws and rules; jurisdictional amount; restriction on judgment; termination of proceedings; conditions; counterclaim.
- 25-2744. Discovery; expert; limitations; motion to modify.
- 25-2745. Motions.
- 25-2746. Action; time limitations.
- 25-2747. Evidence; stipulation; document; objections; Nebraska Evidence Rules; applicability; health care provider report; form.
- 25-2748. Rules and forms; Supreme Court; powers.
- 25-2749. Act; applicability.

(a) MISCELLANEOUS PROCEDURAL PROVISIONS

25-2704 Summons; pleadings; time for filings; trial date; telephonic or videoconference hearing; authorized.

(1) In any civil action in county court, the summons, pleadings, and time for filings shall be the same as provided for civil actions in district court. A case shall stand for trial at the earliest available time on the trial docket after the issues therein are or, according to the times fixed for pleading, should have been made up.

(2) All nonevidentiary hearings, and any evidentiary hearings approved by the county court and by stipulation of all parties that have filed an appearance, may be heard by the court telephonically or by videoconferencing or similar equipment at any location within the judicial district as ordered by the court and in a manner that ensures the preservation of an accurate record. Such hearings shall not include trials before a jury. Hearings conducted in this manner shall be consistent with the public's access to the courts.

Source: Laws 1972, LB 1032, § 35; R.S.1943, (1985), § 24-535; Laws 1997, LB 363, § 1; Laws 1998, LB 234, § 9; Laws 2002, LB 876, § 57; Laws 2008, LB1014, § 12; Laws 2018, LB193, § 42.

25-2706 County court; certify proceedings to district court; when; avoidance of county court jurisdiction; recovery of costs prohibited.

The county court shall certify proceedings to the district court of the county in which an action is pending (1) when the pleadings or discovery proceedings indicate that the amount in controversy is greater than the jurisdictional amount in subdivision (5) of section 24-517 and a party to the action requests the transfer or (2) when the relief requested is exclusively within the jurisdiction of the district court. The county court shall file a certification of the case file and costs with the district court within ten days after entry of the transfer order. The action shall then be tried and determined by the district court as if the proceedings were originally brought in such district court, except that no new pleadings need be filed unless ordered by the district court.

If it is determined, upon adjudication, that the allegations of either party to such action are asserted with the intention solely of avoiding the jurisdiction of the county court, the offending party shall not recover any costs in the county court or the district court.

Source: Laws 1983, LB 137, § 3; Laws 1986, LB 750, § 2; R.S.Supp.,1988, § 24-302.01; Laws 1991, LB 422, § 2; Laws 1993, LB 69, § 1; Laws 2001, LB 269, § 2; Laws 2018, LB193, § 43.

25-2707 Garnishment; amount in excess of jurisdiction of county court; transfer to district court; proceedings certified.

Whenever proceedings under sections 25-1011 and 25-1026 to 25-1031.01, or under section 25-1056, are had in any county court and it shall appear by the pleadings or other answers to interrogatories filed by the garnishee that there is an amount in excess of the jurisdictional dollar amount specified in section 24-517, or property with a value of more than such amount, the title or ownership of which is in dispute, or when at any time during such proceedings it shall appear from the evidence or other pleadings that there is property of the value of more than the jurisdictional dollar amount specified in section 24-517, the title or ownership of which is in dispute, such court shall proceed no further. Within ten days after entry of the transfer order, the county court shall file with the district court of the county in which the action is pending a certification of the case file and costs. The matter shall be tried and determined by the district court as if the proceedings were originally had in district court, except that no new pleadings need be filed except as ordered by the district court.

Source: Laws 1961, c. 116, § 1, p. 358; R.S.1943, § 24-502.01; Laws 1972, LB 1032, § 40; Laws 1986, LB 749, § 1; R.S.Supp., 1988, § 24-540; Laws 2018, LB193, § 44.

(c) UNCLAIMED FUNDS

25-2717 Unclaimed funds; payment to State Treasurer; disposition.

If any fees, money, condemnation awards, legacies, devises, sums due creditors, or costs due or belonging to any heir, legatee, or other person or persons have not been paid to or demanded by the person or persons entitled to the funds within three years from the date the funds were paid to the county judge or his or her predecessors in office, it shall be the duty of the county judge to notify the State Treasurer of the fees, money, condemnation awards, legacies, devises, sums due creditors, or costs remaining. When directed by the State Treasurer, the county judge shall remit the fees, money, condemnation awards, legacies, devises, sums due creditors, or costs to the State Treasurer for deposit in the Unclaimed Property Escheat Trust Fund pursuant to section 69-1317. Such payment shall release the bond of the county judge making such payment of all liability for such fees, money, condemnation awards, legacies, devises, sums due creditors, and costs due to heirs, legatees, or other persons paid in compliance with this section.

Source: Laws 1909, c. 40, § 2, p. 227; R.S.1913, § 1243; Laws 1921, c. 105, § 1, p. 376; C.S.1922, § 1166; C.S.1929, § 27-546; R.S.1943, § 24-553; Laws 1949, c. 49, § 1, p. 157; Laws 1967, c. 139, § 4, p. 427; R.R.S.1943, § 24-553; Laws 1972, LB 1032, § 63; Laws 1978, LB 860, § 1; R.S.1943, (1985), § 24-563; Laws 1992, Third Spec. Sess., LB 26, § 2; Laws 2019, LB406, § 2.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

(d) JUDGMENTS

25-2721 Judgment; execution; lien on real estate; conditions.

(1) Any person having a judgment rendered by a county court may request the clerk of such court to issue execution on the judgment in the same manner as execution is issued upon other judgments rendered in the county court and direct the execution on the judgment to any county in the state. Such person may request that garnishment, attachment, or any other aid to execution be directed to any county without the necessity of filing a transcript of the judgment in the receiving county, and any hearing or proceeding with regard to such execution or aid in execution shall be heard in the court in which the judgment was originally rendered.

(2) Any person having a judgment rendered by a county court may cause a transcript thereof to be filed in the office of the clerk of the district court in any county of this state. When the transcript is so filed and entered upon the judgment index, such judgment shall be a lien on real estate in the county where the transcript is filed, and when the transcript is so filed and entered upon such judgment index, the clerk of such court may issue execution thereupon in like manner as execution is issued upon judgments rendered in the district court.

Source: G.S.1873, c. 14, § 18, p. 267; R.S.1913, § 1221; C.S.1922, § 1144; C.S.1929, § 27-532; R.S.1943, § 24-532; Laws 1972, LB 1032, § 39; R.S.1943, (1985), § 24-539; Laws 1991, LB 422, § 3; Laws 2009, LB35, § 15; Laws 2018, LB193, § 45.

(f) APPEALS

25-2728 Appeals; parties; applicability of sections.

(1) Any party in a civil case and any defendant in a criminal case may appeal from the final judgment or final order of the county court to the district court of the county where the county court is located. In a criminal case, a prosecuting attorney may obtain review by exception proceedings pursuant to sections 29-2317 to 29-2319.

(2) Sections 25-2728 to 25-2738 shall not apply to:

(a) Appeals in eminent domain proceedings as provided in sections 76-715 to 76-723;

(b) Appeals in proceedings in the county court sitting as a juvenile court as provided in sections 43-2,106 and 43-2,106.01;

(c) Appeals in matters arising under the Nebraska Probate Code as provided in section 30-1601;

(d) Appeals in matters arising under the Nebraska Uniform Trust Code;

(e) Appeals in matters arising under the Health Care Surrogacy Act as provided in section 30-1601;

(f) Appeals in adoption proceedings as provided in section 43-112;

(g) Appeals in inheritance tax proceedings as provided in section 77-2023; and

(h) Appeals in domestic relations matters as provided in section 25-2739.

Source: Laws 1981, LB 42, § 1; Laws 1984, LB 13, § 19; Laws 1986, LB 529, § 11; Laws 1989, LB 182, § 8; R.S.Supp.,1989, § 24-541.01;

Laws 1991, LB 732, § 69; Laws 1994, LB 1106, § 2; Laws 1995, LB 538, § 2; Laws 2000, LB 921, § 25; Laws 2003, LB 130, § 118; Laws 2010, LB800, § 3; Laws 2018, LB104, § 20.

Cross References

Health Care Surrogacy Act, see section 30-601.

Nebraska Probate Code, see section 30-2201.

Nebraska Uniform Trust Code, see section 30-3801.

25-2729 Appeals; procedure.

(1) In order to perfect an appeal from the county court, the appealing party shall within thirty days after the entry of the judgment or final order complained of:

- (a) File with the clerk of the county court a notice of appeal; and
- (b) Deposit with the clerk of the county court a docket fee of the district court for cases originally commenced in district court.

(2) Satisfaction of the requirements of subsection (1) of this section shall perfect the appeal and give the district court jurisdiction of the matter appealed.

(3) The entry of a judgment or final order occurs when the clerk of the court places the file stamp and date upon the judgment or final order. For purposes of determining the time for appeal, the date stamped on the judgment or final order shall be the date of entry.

(4) In appeals from the Small Claims Court only, the appealing party shall also, within the time fixed by subsection (1) of this section, deposit with the clerk of the county court a cash bond or undertaking, with at least one good and sufficient surety approved by the court, in the amount of fifty dollars conditioned that the appellant will satisfy any judgment and costs that may be adjudged against him or her.

(5) 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 or final order shall be treated as filed or deposited after the entry of the judgment or final order and on the day of entry.

(6) 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 from 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.

(7) The party appealing shall serve a copy of the notice of appeal upon all parties who have appeared in the action or upon their attorney of record. Proof of service shall be filed with the notice of appeal.

(8) If an appellant fails to comply with any provision of subsection (4) or (7) of this section, the district court on motion and notice may take such action, including dismissal of the appeal, as is just.

Source: Laws 1981, LB 42, § 2; Laws 1984, LB 13, § 20; Laws 1986, LB 529, § 12; R.S.Supp.,1988, § 24-541.02; Laws 1994, LB 1106, § 3; Laws 1995, LB 538, § 3; Laws 1995, LB 598, § 1; Laws 1999, LB 43, § 15; Laws 2000, LB 921, § 26; Laws 2018, LB193, § 46.

25-2731 Appeal; transcript; contents; clerk; duties.

(1) Upon perfection of the appeal, the clerk of the county court shall transmit within ten days to the clerk of the district court a certified copy of the transcript and the docket fee, whereupon the clerk of the district court shall file the appeal. A copy of any bond or undertaking shall be transmitted to the clerk of the district court within ten days of filing.

(2) The Supreme Court shall, by rule and regulation, specify the method of ordering the transcript and the form and content of the transcript.

Source: Laws 1981, LB 42, § 4; Laws 1984, LB 13, § 22; Laws 1986, LB 529, § 14; Laws 1988, LB 352, § 24; R.S.Supp.,1988, § 24-541.04; Laws 2018, LB193, § 47.

(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.

Cross References

Conciliation Court Law, see section 42-802.

(h) EXPEDITED CIVIL ACTIONS

25-2741 Act, how cited.

Sections 25-2741 to 25-2749 shall be known and may be cited as the County Court Expedited Civil Actions Act.

Source: Laws 2020, LB912, § 1.
Effective date November 14, 2020.

25-2742 Civil actions; applicability of act.

(1) The County Court Expedited Civil Actions Act applies to civil actions in county court in which the sole relief sought is a money judgment and in which the claim of each plaintiff is less than or equal to the county court jurisdictional amount set forth in subdivision (5) of section 24-517, including damages of any kind, penalties, interest accrued before the filing date, and attorney's fees, but excluding prejudgment interest accrued after the filing date, postjudgment interest, and costs.

(2) The act does not apply to Small Claims Court actions or domestic relations matters or paternity or custody determinations as defined in section 25-2740.

(3) For the purposes of the act, side means all litigants with generally common interests in the litigation.

Source: Laws 2020, LB912, § 2.
Effective date November 14, 2020.

25-2743 Plaintiffs; certification of relief sought; applicability of laws and rules; jurisdictional amount; restriction on judgment; termination of proceedings; conditions; counterclaim.

(1) Eligible plaintiffs may elect to proceed under the County Court Expedited Civil Actions Act by certifying that the relief sought meets the requirements of section 25-2742. The certification must be on a form approved by the Supreme Court, signed by all plaintiffs and their attorneys, if represented, and filed with

the complaint. The certification is not admissible to prove a plaintiff's damages in any proceeding.

(2) Except as otherwise specifically provided, the Nebraska laws and court rules that are applicable to civil actions are applicable to actions under the act.

(3) A party proceeding under the act may not recover a judgment in excess of the county court jurisdictional amount set forth in subdivision (5) of section 24-517, nor may a judgment be entered against a party in excess of such amount, excluding prejudgment interest that accrues after the filing date, postjudgment interest, and costs. The jury, if any, must not be informed of the county court jurisdictional amount. If the jury returns a verdict for damages in excess of the county court jurisdictional amount for or against a party, the court shall not enter judgment on that verdict in excess of such amount, exclusive of the prejudgment interest that accrues after the filing date, post-judgment interest, and costs.

(4) Upon timely application of any party, the county court may terminate application of the act and enter such orders as are appropriate under the circumstances if:

(a) The moving party makes a specific showing of substantially changed circumstances sufficient to render the application of the act unfair; or

(b) A party has in good faith filed a counterclaim that seeks relief other than that allowed under the act.

(5) A party may assert a counterclaim only if the counterclaim arises out of the same transaction or occurrence as the opposing party's claim. Any such counterclaim is subject to the county court jurisdictional limit on damages under the act, unless the court severs the counterclaim or certifies the action to district court pursuant to section 25-2706 on the grounds that the amount in controversy exceeds the county court jurisdictional limit.

Source: Laws 2020, LB912, § 3.

Effective date November 14, 2020.

25-2744 Discovery; expert; limitations; motion to modify.

(1) Except upon agreement of the parties or leave of court granted upon a showing of good cause, all discovery under the County Court Expedited Civil Actions Act must be completed no later than sixty days before trial.

(2) Except upon agreement of the parties or leave of court granted upon a showing of good cause, discovery under the act is subject to the following additional limitations:

(a) Each side shall serve no more than ten interrogatories on any other side;

(b) Each side shall serve no more than ten requests for production on any other side;

(c) Each side shall serve no more than ten requests for admission on any other side. This limit does not apply to requests for admission of the genuineness of documents that a party intends to offer into evidence at trial;

(d) One deposition of each party may be taken. With regard to corporations, partnerships, voluntary associations, or any other groups or entities named as a party, the entity or one officer, member, or employee of such entity may be deposed; and

(e) Each side may take the deposition of up to two nonparties.

(3) Each side is entitled to one expert, except upon agreement of the parties or leave of court granted upon a showing of good cause. A treating health care provider is counted as an expert for purposes of this subsection.

(4) A motion for leave of court to modify the limitations set forth in this section must be in writing and must set forth the proposed additional discovery or expert and the reasons establishing good cause.

Source: Laws 2020, LB912, § 4.

Effective date November 14, 2020.

25-2745 Motions.

(1) Any party may file any motion permitted under rules adopted by the Supreme Court for pre-answer motions.

(2) A motion for summary judgment must be filed no later than ninety days before trial.

Source: Laws 2020, LB912, § 5.

Effective date November 14, 2020.

25-2746 Action; time limitations.

An action under the County Court Expedited Civil Actions Act should ordinarily be submitted to the jury or the court within two business days from the commencement of trial. Unless the court allows additional time for good cause shown, each side shall be allowed no more than six hours to complete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses, and closing arguments. Time spent on objections, bench conferences, and challenges for cause to a juror are not included in the time limit.

Source: Laws 2020, LB912, § 6.

Effective date November 14, 2020.

25-2747 Evidence; stipulation; document; objections; Nebraska Evidence Rules; applicability; health care provider report; form.

(1) Parties to an action under the County Court Expedited Civil Actions Act should stipulate to factual and evidentiary matters to the greatest extent possible.

(2) For purposes of the act, the court may overrule objections based on authenticity and hearsay to the admission of a document, notwithstanding the absence of testimony or certification from a custodian or other qualified witness, if:

(a) The party offering the document gives notice to all other parties of the party's intention to offer the document into evidence at least ninety days in advance of trial. The notice must be given to all parties together with a copy of any document intended to be offered;

(b) The document on its face appears to be what the proponent claims it is;

(c) The document on its face appears not to be hearsay or appears to fall within a hearsay exception set forth in Nebraska law; and

(d) The objecting party has not raised a substantial question as to the authenticity or trustworthiness of the document.

(3) Except as otherwise specifically provided by the act, the Nebraska Evidence Rules are applicable to actions under the act.

(4) Nothing in subsection (2) of this section authorizes admission of a document that contains hearsay within hearsay, unless the court determines from the face of the document that each part of the combined statements conforms with a hearsay exception set forth in Nebraska law.

(5) Any authenticity or hearsay objections to a document as to which notice has been provided under subdivision (2)(a) of this section must be made within thirty days after receipt of the notice.

(6)(a) The report of any treating health care provider concerning the plaintiff may be used in lieu of deposition or in-court testimony of the health care provider, so long as the report offered into evidence is on a form adopted for such purpose by the Supreme Court and is signed by the health care provider making the report.

(b) The Supreme Court shall adopt a form for the purposes of subdivision (6)(a) of this section.

(c) Unless otherwise stipulated or ordered by the court, a copy of any completed health care provider report under subdivision (6)(a) of this section must be served on all parties at least ninety days in advance of trial. Any objections to the health care provider statement, including an objection that the statement is incomplete or does not otherwise comply with this subsection, must be made within thirty days after receipt of the statement. For good cause shown, the court may issue such orders regarding the health care provider report as justice may require, including an order permitting a health care provider to supplement the report.

(d) Any party against whom a health care provider report may be used has the right, at the party's own initial expense, to cross-examine by deposition the health care provider signing the report, and the deposition may be used at trial.

(e) The deposition of the health care provider and the discovery of facts or opinions held by an expert are not counted for purposes of the numerical limits of section 25-2744.

Source: Laws 2020, LB912, § 7.
Effective date November 14, 2020.

Cross References

Nebraska Evidence Rules, see section 27-1103.

25-2748 Rules and forms; Supreme Court; powers.

The Supreme Court may promulgate rules and forms for actions governed by the County Court Expedited Civil Actions Act, and such rules and forms shall not be in conflict with the act.

Source: Laws 2020, LB912, § 8.
Effective date November 14, 2020.

25-2749 Act; applicability.

The County Court Expedited Civil Actions Act applies to civil actions filed on or after January 1, 2022.

Source: Laws 2020, LB912, § 9.
Effective date November 14, 2020.

ARTICLE 28
SMALL CLAIMS COURT

Section

25-2803. Parties; representation.

25-2804. Actions; how commenced; fee; hearing; notice; setoff or counterclaim; limitations; default judgment; actions authorized.

25-2803 Parties; representation.

(1) Parties in the Small Claims Court may be individuals, partnerships, limited liability companies, corporations, unions, associations, or any other kind of organization or entity.

(2) No party shall be represented by an attorney in the Small Claims Court except as provided in sections 25-2804 and 25-2805.

(3) An individual shall represent himself or herself in the Small Claims Court. A partnership shall be represented by a partner or one of its employees. A limited liability company shall be represented by a member, a manager, or one of its employees. A union shall be represented by a union member or union employee. A corporation shall be represented by one of its employees. An association shall be represented by one of its members or by an employee of the association. Any other kind of organization or entity shall be represented by one of its members or employees.

(4) Only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the Small Claims Court.

(5) No party may file an assigned claim in the Small Claims Court.

(6) No party shall file more than two claims within any calendar week nor more than ten claims in any calendar year in the Small Claims Court.

(7) Notwithstanding any other provision of this section, a personal representative of a decedent's estate, a guardian, or a conservator may be a party in the Small Claims Court.

Source: Laws 1972, LB 1032, § 23; Laws 1987, LB 77, § 1; Laws 1987, LB 536, § 2; R.S.Supp., 1988, § 24-523; Laws 1993, LB 121, § 174; Laws 2010, LB712, § 5; Laws 2019, LB71, § 1.

25-2804 Actions; how commenced; fee; hearing; notice; setoff or counterclaim; limitations; default judgment; actions authorized.

(1) Actions in the Small Claims Court shall be commenced by the plaintiff by filing a claim personally, by mail, or by another method established by Supreme Court rules.

(2) At the time of the filing of the claim, the plaintiff shall pay a fee of six dollars and twenty-five cents to the clerk. One dollar and twenty-five cents of such fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges.

(3) Upon filing of a claim in the Small Claims Court, the court shall set a time for hearing and shall cause notice to be served upon the defendant. Notice shall be served not less than five days before the time set for hearing. Notice shall consist of a copy of the complaint and a summons directing the defendant to appear at the time set for hearing and informing the defendant that if he or she

fails to appear, judgment will be entered against him or her. Notice shall be served in the manner provided for service of a summons in a civil action. If the notice is to be served by certified mail, the clerk shall provide the plaintiff with written instructions, prepared and provided by the State Court Administrator, regarding the proper procedure for service by certified mail. The cost of service shall be paid by the plaintiff, but such cost and filing fee shall be added to any judgment given the plaintiff.

(4) The defendant may file a setoff or counterclaim. Any setoff or counterclaim shall be filed and a copy delivered to the plaintiff at least two days prior to the time of trial. If the setoff or counterclaim exceeds the jurisdictional limits of the Small Claims Court as established pursuant to section 25-2802, the court shall cause the entire matter to be transferred to the regular county court docket and set for trial.

(5) No prejudgment actions for attachment, garnishment, replevin, or other provisional remedy may be filed in the Small Claims Court.

(6) All forms required by this section shall be prescribed by the Supreme Court. The claim form shall provide for the names and addresses of the plaintiff and defendant, a concise statement of the nature, amount, and time and place of accruing of the claim, and an acknowledgment for use by the person in whose presence the claim form is executed and shall also contain a brief explanation of the Small Claims Court procedure and methods of appeal therefrom.

(7) For a default judgment rendered by a Small Claims Court (a) the default judgment may be appealed as provided in section 25-2807, (b) if a motion for a new trial, by the procedure provided in sections 25-1142, 25-1144, and 25-1144.01, is filed ten days or less after entry of the default judgment, the court may act upon the motion without a hearing, or (c) if more than ten days have passed since the entry of the default judgment, the court may set aside, vacate, or modify the default judgment as provided in section 25-2720.01. Parties may be represented by attorneys for the purpose of filing a motion for a new trial or to set aside, vacate, or modify a default judgment.

Source: Laws 1972, LB 1032, § 24; Laws 1973, LB 226, § 7; Laws 1975, LB 283, § 1; Laws 1979, LB 117, § 2; Laws 1980, LB 892, § 1; Laws 1982, LB 928, § 17; Laws 1983, LB 447, § 14; Laws 1984, LB 13, § 14; Laws 1985, LB 373, § 3; Laws 1986, LB 125, § 1; Laws 1987, LB 77, § 2; R.S.Supp.,1988, § 24-524; Laws 2000, LB 921, § 28; Laws 2005, LB 348, § 4; Laws 2010, LB712, § 6; Laws 2020, LB1028, § 5.

Effective date November 14, 2020.

ARTICLE 29

DISPUTE RESOLUTION

(a) DISPUTE RESOLUTION ACT

Section	
25-2901.	Act, how cited.
25-2902.	Legislative findings.
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25-2904.	Office of Dispute Resolution; established; director; qualifications; duties.
25-2905.	Advisory Council on Dispute Resolution; created; members.
25-2906.	Council; members; terms; vacancy; officers.

DISPUTE RESOLUTION

§ 25-2902

Section	
25-2907.	Council; powers and duties; members; expenses.
25-2908.	Director; duties.
25-2909.	Grants; application; contents; approved centers; reports.
25-2911.	Restorative justice programs and dispute resolution; types of cases; referral of cases.
25-2912.	Restorative justice or dispute resolution process; procedures.
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25-2912.02.	Best practices; policies and procedures.
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25-2914.	Confidentiality; exceptions.
25-2914.01.	Verbal, written, or electronic communication; confidentiality; privileged; disclosure; when; activities of juvenile; limit on evidence.
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25-2917.	Tolling of civil statute of limitations; when.
25-2918.	Rules and regulations.
25-2919.	Application of act.
25-2920.	Director; report.
25-2921.	Dispute Resolution Cash Fund; created; use; investment.

(a) DISPUTE RESOLUTION ACT

25-2901 Act, how cited.

Sections 25-2901 to 25-2921 shall be known and may be cited as the Dispute Resolution Act.

Source: Laws 1991, LB 90, § 1; Laws 1996, LB 922, § 1; Laws 2019, LB595, § 1.

25-2902 Legislative findings.

The Legislature finds that:

(1) The resolution of certain disputes and offenses can be costly and time consuming in the context of a formal judicial proceeding;

(2) Employing restorative justice and mediation to address disputes can provide an avenue for efficiently reducing the volume of matters which burden the court system in this state;

(3) Restorative justice practices and programs can meet the needs of Nebraska's residents by providing forums in which persons may participate in voluntary or court-ordered resolution of juvenile and adult offenses in an informal and less adversarial atmosphere;

(4) Employing restorative justice can provide an avenue for repair, healing, accountability, and community safety to address the harm experienced by victims as a result of an offense committed by youth or adult individuals;

(5) Restorative justice practices and programs are grounded in a wide body of research and evidence showing individuals who participate in restorative justice practices and programs are less likely to reoffend;

(6) Unresolved disputes of those who do not have the resources for formal resolution may be of small social or economic magnitude individually but are collectively of enormous social and economic consequences;

(7) Many seemingly minor conflicts between individuals may escalate into major social problems unless resolved early in an atmosphere in which the

persons involved can discuss the dispute or offense through a private and informal yet structured process;

(8) There is a need in our society to reduce acrimony and improve relationships between people in conflict which has a long-term benefit of a more peaceful community of people;

(9) There is a compelling need in a complex society for dispute resolution and restorative justice whereby people can participate in creating comprehensive, lasting, and realistic resolutions to conflicts and offenses;

(10) Mediation can increase the public's access to dispute resolution and thereby increase public regard and usage of the legal system; and

(11) Office-approved nonprofit dispute resolution centers can make a substantial contribution to the operation and maintenance of the courts of this state by preserving the court's scarce resources for those disputes and offenses which cannot be resolved by means other than litigation.

Source: Laws 1991, LB 90, § 2; Laws 2019, LB595, § 2.

25-2903 Terms, defined.

For purposes of the Dispute Resolution Act:

(1) Approved center means a center that has applied for and received approval from the director under section 25-2909;

(2) Center means a nonprofit organization or a court-established program which makes dispute resolution procedures and restorative justice services available;

(3) Council means the Advisory Council on Dispute Resolution;

(4) Director means the Director of the Office of Dispute Resolution;

(5) Dispute resolution process means a process by which the parties involved in a dispute voluntarily agree to enter into informal discussion and negotiation with the assistance of a mediator;

(6) Mediation means the intervention into a dispute by a third party who has no decisionmaking authority and is impartial to the issues being discussed;

(7) Mediator means a person trained in the process of mediation who assists parties in dispute to reach a mutually acceptable resolution of their conflict;

(8) Office means the Office of Dispute Resolution;

(9) Restorative justice facilitator means a person trained to facilitate restorative justice practices as a staff member or affiliate of an approved center; and

(10) Restorative justice means practices, programs, or services described in section 25-2912.01 that emphasize repairing the harm caused to victims and the community by persons who have caused the harm or committed an offense.

Source: Laws 1991, LB 90, § 3; Laws 2019, LB595, § 3.

25-2904 Office of Dispute Resolution; established; director; qualifications; duties.

The Office of Dispute Resolution is hereby established in the office of the State Court Administrator. The director of the office shall be hired by the Supreme Court. The director may but need not be an attorney and shall be hired on the basis of his or her training and experience in mediation, restora-

tive justice, and dispute resolution. The director shall administer the Dispute Resolution Act and shall serve as staff to the council.

Source: Laws 1991, LB 90, § 4; Laws 2019, LB595, § 4.

25-2905 Advisory Council on Dispute Resolution; created; members.

The Advisory Council on Dispute Resolution is hereby created. The council shall be comprised of individuals from a variety of disciplines who are trained and knowledgeable in mediation, restorative justice, and dispute resolution and selected to be representative of the geographical and cultural diversity of the state and to reflect gender fairness. The council shall consist of fifteen voting members. The membership shall include a district court judge, county court judge, and juvenile court judge and a representative from the Office of Probation Administration, the Nebraska State Bar Association, and the Nebraska County Attorneys Association. Nominations for the remaining members may be solicited from such entities and from the Nebraska Mediation Association, the Public Counsel, social workers, mental health professionals, diversion program administrators, educators, law enforcement entities, crime victim advocates, and former participants in restorative justice programs and related fields. The council shall be appointed by the Supreme Court or its designee. The Supreme Court or its designee shall not be restricted to the solicited list of nominees in making its appointments. Two nonvoting, ex officio members shall be appointed by the council from among the approved centers.

Source: Laws 1991, LB 90, § 5; Laws 1999, LB 315, § 2; Laws 2019, LB595, § 5.

25-2906 Council; members; terms; vacancy; officers.

The initial members of the council and the new members required by the changes to section 25-2905 made by Laws 2019, LB595, shall be appointed for terms of one, two, or three years. All subsequent appointments shall be made for terms of three years. Any vacancy on the council shall be filled and shall last for the duration of the term vacated. Appointments to the council required by changes to section 25-2905 made by Laws 2019, LB595, shall be made within ninety days after September 1, 2019. The council shall select a chairperson, a vice-chairperson, and such other officers as it deems necessary.

Source: Laws 1991, LB 90, § 6; Laws 2019, LB595, § 6.

25-2907 Council; powers and duties; members; expenses.

(1) The council shall advise the director on the administration of the Dispute Resolution Act.

(2) The council shall meet at least four times per year and at other times deemed necessary to perform its functions. Members of the council shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

(3) The council may appoint task forces to carry out its work. Task force members shall have knowledge of, responsibility for, or interest in an area related to the duties of the council.

Source: Laws 1991, LB 90, § 7; Laws 2020, LB381, § 21.
Operative date January 1, 2021.

25-2908 Director; duties.

Consistent with the purposes and objectives of the Dispute Resolution Act and in consultation with the council, the director shall:

- (1) Approve centers which meet requirements for approval;
- (2) Develop and supervise a uniform system of reporting and collecting statistical data from approved centers;
- (3) Develop and supervise a uniform system of evaluating approved centers;
- (4) Prepare a yearly budget for the implementation of the act and distribute funds to approved centers;
- (5) Develop and administer guidelines for a sliding scale of fees to be charged by approved centers;
- (6) Develop, initiate, or approve curricula and training sessions for mediators and staff of approved centers and of courts;
- (7) Establish volunteer training programs;
- (8) Promote public awareness of the restorative justice and dispute resolution process;
- (9) Apply for and receive funds from public and private sources for carrying out the purposes and obligations of the act;
- (10) Develop and supervise a uniform system to create and maintain a roster of approved centers and victim youth conferencing and other restorative justice facilitators who are affiliated with approved centers. The roster shall be made available to courts and county attorneys;
- (11) Enhance the sustainability of approved centers;
- (12) Support approved centers in the implementation of restorative justice programs;
- (13) Coordinate the development and implementation of new restorative justice programs;
- (14) Develop and administer a uniform system for reporting and collecting statistical data regarding restorative justice programs from approved centers;
- (15) Develop and administer a uniform system for evaluating restorative justice programs administered by approved centers;
- (16) Develop and administer a uniform system for evaluating quality assurance and fidelity to established restorative justice principles;
- (17) Coordinate software and data management system quality assurance for the office and the approved centers;
- (18) Coordinate restorative justice training sessions for restorative justice facilitators and staff of approved centers and the courts;
- (19) Review and provide analyses of state and federal laws and policies and judicial branch policies relating to restorative justice programs for juvenile populations and adult populations;
- (20) Promote public awareness of the restorative justice and dispute resolution process under the Dispute Resolution Act; and
- (21) Seek and identify funds from public and private sources for carrying out new and ongoing restorative justice programs.

Source: Laws 1991, LB 90, § 8; Laws 1998, LB 1073, § 7; Laws 2019, LB595, § 7.

25-2909 Grants; application; contents; approved centers; reports.

(1) The office shall annually award grants to approved centers. It is the intent of the Legislature that centers be established and grants distributed statewide.

(2) A center or an entity proposing a center may apply to the office for approval to provide services under the Dispute Resolution Act by submitting an application which includes:

- (a) A strategic plan for the operation of the center;
- (b) The center's objectives;
- (c) The areas of population to be served;
- (d) The administrative organization;
- (e) Record-keeping procedures;
- (f) Procedures for intake, for scheduling, and for conducting and terminating restorative justice programs and dispute resolution sessions;
- (g) Qualifications for mediators and restorative justice facilitators for the center;
- (h) An annual budget for the center;
- (i) The results of an audit of the center for a period covering the previous year if the center was in operation for such period; and
- (j) Proof of 501(c)(3) status under the Internal Revenue Code or proof of establishment by a court.

(3) The office may specify additional criteria for approval and for grants as it deems necessary.

(4) Annual reports shall be required of each approved center. The reports shall include the number and types of cases handled in the year and a showing of continued compliance with the act.

Source: Laws 1991, LB 90, § 9; Laws 2019, LB595, § 8.

25-2911 Restorative justice programs and dispute resolution; types of cases; referral of cases.

(1) The following types of cases may be accepted for restorative justice programs and dispute resolution at an approved center:

- (a) Civil claims and disputes, including, but not limited to, consumer and commercial complaints, disputes between neighbors, disputes between business associates, disputes between landlords and tenants, and disputes within communities;
- (b) Disputes concerning child custody, parenting time, visitation, or other access and other areas of domestic relations;
- (c) Juvenile offenses and disputes involving juveniles when appropriate, which shall be determined according to the policies and procedures provided for in section 25-2918;
- (d) Disputes involving youth that occur in families, in educational settings, and in the community at large;
- (e) Adult criminal offenses and disputes involving juvenile, adult, or community victims when appropriate, which shall be determined according to the policies and procedures provided for in section 25-2918; and
- (f) Contested guardianship and contested conservatorship proceedings.

(2) Restorative justice practices at an approved center may be used in addition to any other condition, consequence, or sentence imposed by a court, a probation officer, a diversion program, a school, or another community program.

(3) An approved center may accept cases referred by a court, an attorney, a law enforcement officer, a social service agency, a school, or any other interested person or agency or upon the request of the parties involved. A case may be referred prior to the commencement of formal judicial proceedings or may be referred as a pending court case. If a court refers a case to an approved center, the center shall provide information to the court as to whether an agreement was reached. If the court requests a copy of the agreement, the center shall provide it.

Source: Laws 1991, LB 90, § 11; Laws 2007, LB554, § 25; Laws 2011, LB157, § 2; Laws 2019, LB595, § 9.

25-2912 Restorative justice or dispute resolution process; procedures.

Before the restorative justice or dispute resolution process begins, an approved center shall provide the parties with a written statement setting forth the procedures to be followed.

Source: Laws 1991, LB 90, § 12; Laws 2019, LB595, § 10.

25-2912.01 Restorative justice practices, restorative justice services, or restorative justice programs; activities to repair harm.

Restorative justice practices, restorative justice services, or restorative justice programs include, but are not limited to, victim youth conferences, victim-offender mediation, family group conferences, circles, peer-to-peer mediation, truancy mediation, victim or community panels, and community conferences. Restorative justice programs may involve restorative projects or classes and facilitated meetings attended voluntarily by the victim, the victim's representatives, or a victim surrogate and the victim's supporters, as well as the youth or adult individual who caused harm and that individual's supporters, whether voluntarily or following a referral for assessment by court order. These meetings may also include community members, when appropriate. By engaging the parties to the offense or harm in voluntary dialogue, restorative justice provides an opportunity for healing for the victim and the individual who harmed the victim by:

(1) Holding the individual who caused harm accountable and providing the individual a platform to accept responsibility and gain empathy for the harm he or she caused to the victim and community;

(2) Providing the victim a platform to describe the impact that the harm had upon himself or herself or his or her family and to identify detriments experienced or any losses incurred;

(3) Providing the opportunity to enter into a reparation plan agreement; and

(4) Enabling the victim and the individual who caused harm the opportunity to agree on consequences to repair the harm, to the extent possible. This includes, but is not limited to, apologies, community service, reparation, restitution, restoration, and counseling.

Source: Laws 2019, LB595, § 11.

25-2912.02 Best practices; policies and procedures.

The office and the approved centers shall strive to conduct restorative justice programs in accordance with best practices, including evidence-based programs, and shall adopt policies and procedures to accomplish this goal.

Source: Laws 2019, LB595, § 12.

25-2913 Mediators and restorative justice facilitators; qualifications; compensation; powers and duties.

(1) Mediators and restorative justice facilitators of approved centers shall have completed at least thirty hours of basic mediation training, including conflict resolution techniques, neutrality, agreement writing, and ethics. An initial apprenticeship with an experienced mediator shall be required for at least three sessions for all mediators without prior mediation experience.

(2) In addition to the basic mediation training required under subsection (1) of this section:

(a) For disputes involving marital dissolution, parenting, or child custody, mediators of approved centers shall have additional training in family mediation; and

(b) For disputes involving harm done to others or the community, restorative justice facilitators of approved centers shall have additional restorative justice training that has been approved by the office. Such training should include, but not be limited to, topics such as restorative justice basics, trauma-informed practices, juvenile developmental characteristics, and crime victimization.

(3) An approved center may provide for the compensation of mediators and restorative justice facilitators, utilize the services of volunteer mediators and restorative justice facilitators, or utilize the services of both paid and volunteer mediators and restorative justice facilitators.

(4) The mediator or restorative justice facilitator shall provide an opportunity for the parties to achieve a mutually acceptable resolution of their dispute, in joint or separate sessions, as appropriate, including a reparation plan agreement regarding reparations through dialogue and negotiation. A mediator shall be impartial, neutral, and unbiased and shall make no decisions for the parties.

(5) The mediator or restorative justice facilitator shall officially terminate the process if the parties are unable to agree or if, in the judgment of the mediator, the agreement would be unconscionable. The termination shall be without prejudice to either party in any other proceeding.

(6) The mediator or restorative justice facilitator has no authority to make or impose any adjudicatory sanction or penalty upon the parties.

(7) The mediator or restorative justice facilitator shall be aware of and recommend outside resources to the parties whenever appropriate. The mediator or restorative justice facilitator shall advise participants to obtain legal review of agreements as necessary.

Source: Laws 1991, LB 90, § 13; Laws 2019, LB595, § 13.

25-2914 Confidentiality; exceptions.

(1) Any verbal, written, or electronic communication made in or in connection with matters referred to mediation which relates to the controversy or dispute being mediated and agreements resulting from the mediation, whether

made to the mediator, the staff of an approved center, a party, or any other person attending the mediation session, shall be confidential.

(2) Mediation proceedings shall be regarded as settlement negotiations, and no admission, representation, or statement made in mediation, not otherwise discoverable or obtainable, shall be admissible as evidence or subject to discovery.

(3) A mediator shall not be subject to process requiring the disclosure of any matter discussed during mediation proceedings unless all the parties consent to a waiver.

(4) Confidential communications and materials are subject to disclosure when all parties agree in writing to waive confidentiality regarding specific verbal, written, or electronic communications relating to the mediation session or the agreement.

(5) This section shall not apply if a party brings an action against the mediator or center, if the communication was made in furtherance of a crime or fraud, or if this section conflicts with other legal requirements.

Source: Laws 1991, LB 90, § 14; Laws 1994, LB 868, § 1; Laws 2019, LB595, § 14.

25-2914.01 Verbal, written, or electronic communication; confidentiality; privileged; disclosure; when; activities of juvenile; limit on evidence.

(1) Any verbal, written, or electronic communication made in or in connection with matters referred to a restorative justice program which relates to the controversy or dispute undergoing restorative justice and agreements resulting from the restorative justice program, whether made to the restorative justice facilitator, the staff of an approved center, a party, or any other person attending the restorative justice program, shall be confidential and privileged.

(2) No admission, confession, or incriminating information obtained from a juvenile in the course of any restorative justice program that is conducted in conjunction with proceedings under the Dispute Resolution Act or as directed by a court, including, but not limited to, school-based disciplinary proceedings, juvenile diversion, court-ordered detention, or probation, shall be admitted into evidence against such juvenile, except as rebuttal or impeachment evidence, in any future adjudication hearing under the Nebraska Juvenile Code or in any criminal proceeding. Such admission, confession, or incriminating information may be considered by a court at sentencing or by a juvenile court during disposition proceedings.

(3) Confidential communications and materials are subject to disclosure when all parties to the restorative justice program agree in writing to waive confidentiality regarding specific verbal, written, or electronic communications relating to the restorative justice program or the agreement.

(4) This section shall not apply if:

(a) A party brings an action against the restorative justice facilitator or approved center;

(b) The communication was made in furtherance of a crime or fraud;

(c) The communication is required to be reported under section 28-711 and is a new allegation of child abuse or neglect which was not previously known or reported; or

(d) This section conflicts with other legal requirements.

Source: Laws 2019, LB595, § 15.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

25-2915 Immunity; exceptions.

No mediator, restorative justice facilitator, staff member, or member of a governing board of an approved center may be held liable for civil damages for any statement or decision made in the process of restorative justice or dispute resolution unless such person acted in a manner exhibiting willful or wanton misconduct.

Source: Laws 1991, LB 90, § 15; Laws 2019, LB595, § 16.

25-2916 Agreement; contents.

(1) If the parties involved in mediation reach an agreement, the agreement may be reduced to writing and signed by the parties. The agreement shall set forth the settlement of the issues and the future responsibilities of each party. If a court referred the case, the agreement as signed and approved by the parties may be presented to the court as a stipulation and, if approved by the court, shall be enforceable as an order of the court.

(2) If the parties involved in a restorative justice program reach a reparation plan agreement, the agreement may be reduced to writing and signed by the parties. The agreement shall set forth the reparations agreed upon by the parties to repair the specific circumstances of the offense. These may include, but are not limited to, service to the victim, an apology to the victim, financial restitution, services for the individual who caused the harm, community service, or any other reparation agreed upon by the parties. The agreement shall specify the time period during which such individual must comply with the requirements specified therein.

Source: Laws 1991, LB 90, § 16; Laws 2019, LB595, § 17.

25-2917 Tolling of civil statute of limitations; when.

During the period of the restorative justice or dispute resolution process, any applicable civil statute of limitations shall be tolled as to the parties. The tolling shall commence on the date the approved center accepts the case and shall end on the date of the last restorative justice or mediation session. This period shall be no longer than sixty days without consent of all the parties.

Source: Laws 1991, LB 90, § 17; Laws 2019, LB595, § 18.

25-2918 Rules and regulations.

(1) The Supreme Court, upon recommendation by the director in consultation with the council, shall adopt and promulgate rules and regulations to carry out the Dispute Resolution Act.

(2) The office may adopt and promulgate policies and procedures to carry out the Dispute Resolution Act.

Source: Laws 1991, LB 90, § 18; Laws 2019, LB595, § 19.

25-2919 Application of act.

The Dispute Resolution Act shall apply only to approved centers and mediators and restorative justice facilitators of such centers.

Source: Laws 1991, LB 90, § 19; Laws 2019, LB595, § 20.

25-2920 Director; report.

The director shall provide an annual report regarding the implementation of the Dispute Resolution Act. The report shall be available to the public on the Supreme Court's web site. The report shall include the number and types of disputes received, the disposition of the disputes, any problems encountered, and any recommendations to address problems.

Source: Laws 1991, LB 90, § 20; Laws 2012, LB782, § 29; Laws 2019, LB595, § 21.

25-2921 Dispute Resolution Cash Fund; created; use; investment.

The Dispute Resolution Cash Fund is created. The State Court Administrator shall administer the fund. The fund shall consist of proceeds received pursuant to subdivision (9) of section 25-2908 and section 33-155. The fund shall be used to supplement the administration of the office and the support of the approved centers. 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 1996, LB 922, § 2; Laws 2003, LB 760, § 8; Laws 2009, First Spec. Sess., LB3, § 12; Laws 2011, LB378, § 18; Laws 2019, LB595, § 22.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 33

NONRECOURSE CIVIL LITIGATION ACT

Section

25-3308. Registration fee; renewal fee.

25-3308 Registration fee; renewal fee.

(1) An application for registration or renewal of registration under section 25-3307 shall be accompanied by either an application for registration fee or a renewal of registration fee, as applicable.

(2) The Secretary of State may, by rule and regulation, establish fees for applications for registration and renewals of registration at rates sufficient to cover the costs of administering the Nonrecourse Civil Litigation Act, in the event any such fees are required. Such fees shall be collected by the Secretary of State and remitted to the State Treasurer for credit to the Secretary of State Cash Fund.

Source: Laws 2010, LB1094, § 8; Laws 2020, LB910, § 10.
Operative date July 1, 2021.

ARTICLE 34
PRISONER LITIGATION

Section

25-3401. Prisoner; civil actions; in forma pauperis litigation; limitation; finding by court that action was frivolous.

25-3401 Prisoner; civil actions; in forma pauperis litigation; limitation; finding by court that action was frivolous.

(1) For purposes of this section:

(a) Civil action means a legal action seeking monetary damages, injunctive relief, declaratory relief, or any appeal filed in any court in this state that relates to or involves a prisoner's conditions of confinement. Civil action does not include a motion for postconviction relief or petition for habeas corpus relief;

(b) Conditions of confinement means any circumstance, situation, or event that involves a prisoner's custody, transportation, incarceration, or supervision;

(c) Correctional institution means any state or local facility that incarcerates or detains any adult accused of, charged with, convicted of, or sentenced for any crime;

(d) Frivolous means the law and evidence supporting a litigant's position is wholly without merit or rational argument; and

(e) Prisoner means any person who is incarcerated, imprisoned, or otherwise detained in a correctional institution.

(2)(a) A prisoner who has filed three or more civil actions, commenced after July 19, 2012, that have been found to be frivolous by a court of this state or a federal court for a case originating in this state shall not be permitted to proceed in forma pauperis for any further civil actions without leave of court. A court shall permit the prisoner to proceed in forma pauperis if the court determines that the person is in danger of serious bodily injury.

(b) A court may include in its final order or judgment in any civil action a finding that the action was frivolous.

(c) A finding under subdivision (2)(b) of this section shall be reflected in the record of the case.

(d) This subsection does not apply to judicial review of disciplinary procedures in adult institutions administered by the Department of Correctional Services governed by sections 83-4,109 to 83-4,123.

Source: Laws 2012, LB793, § 1; Laws 2018, LB193, § 48.

ARTICLE 35
UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED
DISCLOSURE OF INTIMATE IMAGES

Section

25-3501. Act, how cited.

25-3502. Definitions.

25-3503. Civil action.

25-3504. Exceptions to liability.

25-3505. Remedies.

25-3506. Statute of limitations.

Section

25-3507. Construction.

25-3508. Uniformity of application and construction.

25-3509. Plaintiff's privacy.

25-3501 Act, how cited.

Sections 25-3501 to 25-3508 shall be known and may be cited as the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act.

Source: Laws 2019, LB680, § 1.

25-3502 Definitions.

In the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act:

(1) Consent means affirmative, conscious, and voluntary authorization by an individual with legal capacity to give authorization.

(2) Depicted individual means an individual whose body is shown in whole or in part in an intimate image.

(3) Disclosure means transfer, publication, or distribution to another person. Disclose has a corresponding meaning.

(4) Identifiable means recognizable by a person other than the depicted individual:

(A) from an intimate image itself; or

(B) from an intimate image and identifying characteristic displayed in connection with the intimate image.

(5) Identifying characteristic means information that may be used to identify a depicted individual.

(6) Individual means a human being.

(7) Intimate image means a photograph, film, video recording, or other similar medium that shows:

(A) the uncovered genitals, pubic area, anus, or female post-pubescent nipple of a depicted individual; or

(B) a depicted individual engaging in or being subjected to sexual conduct.

(8) Person means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(9) Sexual conduct includes:

(A) masturbation;

(B) genital, anal, or oral sex;

(C) sexual penetration of, or with, an object;

(D) bestiality; or

(E) the transfer of semen onto a depicted individual.

Source: Laws 2019, LB680, § 2.

25-3503 Civil action.

(a) In this section:

(1) Harm includes physical harm, economic harm, and emotional distress whether or not accompanied by physical or economic harm.

(2) Private means:

(A) created or obtained under circumstances in which a depicted individual had a reasonable expectation of privacy; or

(B) made accessible through theft, bribery, extortion, fraud, false pretenses, voyeurism, or exceeding authorized access to an account, message, file, device, resource, or property.

(b) Except as otherwise provided in section 25-3504, a depicted individual who is identifiable and who suffers harm from a person's intentional disclosure or threatened disclosure of an intimate image that was private without the depicted individual's consent has a cause of action against the person if the person knew or acted with reckless disregard for whether:

(1) the depicted individual did not consent to the disclosure;

(2) the intimate image was private; and

(3) the depicted individual was identifiable.

(c) The following conduct by a depicted individual does not establish by itself that the individual consented to the disclosure of the intimate image which is the subject of an action under the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act or that the individual lacked a reasonable expectation of privacy:

(1) consent to creation of the image; or

(2) previous consensual disclosure of the image.

(d) A depicted individual who does not consent to the sexual conduct or uncovering of the part of the body depicted in an intimate image of the individual retains a reasonable expectation of privacy even if the image was created when the individual was in a public place.

Source: Laws 2019, LB680, § 3.

25-3504 Exceptions to liability.

(a) In this section:

(1) Child means an unemancipated individual who is less than nineteen years of age.

(2) Parent means an individual recognized as a parent under law of this state other than the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act.

(b) A person is not liable under the act if the person proves that disclosure of, or a threat to disclose, an intimate image was:

(1) made in good faith in:

(A) law enforcement;

(B) a legal proceeding; or

(C) medical education or treatment;

(2) made in good faith in the reporting or investigation of:

(A) unlawful conduct; or

(B) unsolicited and unwelcome conduct;

- (3) related to a matter of public concern or public interest; or
- (4) reasonably intended to assist the depicted individual.

(c) Subject to subsection (d) of this section, a defendant who is a parent, legal guardian, or individual with legal custody of a child is not liable under the act for a disclosure or threatened disclosure of an intimate image, as defined in subdivision (7)(A) of section 25-3502, of the child.

(d) If a defendant asserts an exception to liability under subsection (c) of this section, the exception does not apply if the plaintiff proves the disclosure was:

- (1) prohibited by law other than the act; or
- (2) made for the purpose of sexual arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

(e) Disclosure of, or a threat to disclose, an intimate image is not a matter of public concern or public interest solely because the depicted individual is a public figure.

Source: Laws 2019, LB680, § 4.

25-3505 Remedies.

(a) In an action under the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, a prevailing plaintiff may recover as compensation:

(1)(A) economic and noneconomic damages proximately caused by the defendant's disclosure or threatened disclosure, including damages for emotional distress whether or not accompanied by other damages; or

(B) if the actual damages are incapable of being quantified or difficult to quantify, presumed damages not to exceed ten thousand dollars against each defendant in an amount that bears a reasonable relationship to the probable damages incurred by the prevailing plaintiff. In determining the amount of presumed damages under subdivision (a)(1)(B) of this section, consideration must be given to the age of the parties at the time of the disclosure or threatened disclosure, the number of disclosures or threatened disclosures made by the defendant, the breadth of distribution of the image by the defendant, and other exacerbating or mitigating factors; and

(2) an amount equal to any monetary gain made by the defendant from disclosure of the intimate image.

(b) In an action under the act, the court may award a prevailing plaintiff:

- (1) reasonable attorney's fees and costs; and
- (2) additional relief, including injunctive relief.

(c) The act does not affect a right or remedy available under law of this state other than the act.

Source: Laws 2019, LB680, § 5.

25-3506 Statute of limitations.

(a) An action under subsection (b) of section 25-3503 for:

(1) an unauthorized disclosure may not be brought later than four years from the date the disclosure was discovered or should have been discovered with the exercise of reasonable diligence; and

(2) a threat to disclose may not be brought later than four years from the date of the threat to disclose.

(b) This section is subject to section 25-213.

Source: Laws 2019, LB680, § 6.

25-3507 Construction.

(a) In an action brought under the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, no provider or user of an interactive computer service shall be treated as a person disclosing any information provided by another information content provider unless the provider or user of such interactive computer service is responsible, in whole or in part, for the creation or development of the information provided through the Internet or any other interactive service.

(b) No provider or user of an interactive computer service shall be held liable under the act on account of:

(1) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(2) any action taken to enable or make available to any information content provider or others the technical means to restrict access to material described in subdivision (b)(1) of this section.

(c) Nothing in the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act shall be construed to impose liability on an interactive computer service for content provided by another person.

(d) The Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act must be construed to be consistent with 47 U.S.C. 230, as such section existed on January 1, 2019.

(e) The act may not be construed to alter the law of this state on sovereign immunity.

(f) For purposes of this section, information content provider and interactive computer service have the same meanings as in 47 U.S.C. 230, as such section existed on January 1, 2019.

Source: Laws 2019, LB680, § 7.

25-3508 Uniformity of application and construction.

In applying and construing the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2019, LB680, § 8.

25-3509 Plaintiff's privacy.

In any action brought pursuant to the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, a plaintiff may request to use a pseudonym instead of his or her legal name in all court proceedings and

records. Upon finding that the use of a pseudonym is proper, the court shall ensure that the pseudonym is used in all court proceedings and records.

Source: Laws 2019, LB680, § 9.

Cross References

Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, see section 25-3501.

CHAPTER 27

COURTS; RULES OF EVIDENCE

Article.

- 4. Relevancy and Its Limits. 27-404 to 27-413.
- 7. Opinion and Expert Testimony. 27-707.
- 8. Hearsay. 27-801.
- 11. Miscellaneous Rules. 27-1103.

ARTICLE 4

RELEVANCY AND ITS LIMITS

Section

- 27-404. Rule 404. Character evidence; not admissible to prove conduct; exceptions; evidence of other crimes, wrongs, or acts; standard of proof; sexual assault; provisions applicable.
- 27-412. Sex offense cases; relevance of alleged victim's past sexual behavior or alleged sexual predisposition; evidence of victim's consent; when not admissible.
- 27-413. Offense of sexual assault, defined.

27-404 Rule 404. Character evidence; not admissible to prove conduct; exceptions; evidence of other crimes, wrongs, or acts; standard of proof; sexual assault; provisions applicable.

(1) Evidence of a person's character or a trait of his or her character is not admissible for the purpose of proving that he or she acted in conformity therewith on a particular occasion, except:

(a) Evidence of a pertinent trait of his or her character offered by an accused, or by the prosecution to rebut the same;

(b) Evidence of a pertinent trait of character of the victim of the crime offered by an accused or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor. In a sexual assault case, reputation, opinion, or other evidence of past sexual behavior of the victim is governed by section 27-412; or

(c) Evidence of the character of a witness as provided in sections 27-607 to 27-609.

(2) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he or she acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(3) When such evidence is admissible pursuant to this section, in criminal cases evidence of other crimes, wrongs, or acts of the accused may be offered in evidence by the prosecution if the prosecution proves to the court by clear and convincing evidence that the accused committed the crime, wrong, or act. Such proof shall first be made outside the presence of any jury.

(4) Regarding the admissibility in a civil or criminal action of evidence of a person's commission of another offense or offenses of sexual assault under sections 28-316.01 and 28-319 to 28-322.05, see sections 27-413 to 27-415.

Source: Laws 1975, LB 279, § 14; Laws 1984, LB 79, § 2; Laws 1993, LB 598, § 1; Laws 2009, LB97, § 7; Laws 2019, LB519, § 2; Laws 2020, LB881, § 2.

Effective date November 14, 2020.

27-412 Sex offense cases; relevance of alleged victim's past sexual behavior or alleged sexual predisposition; evidence of victim's consent; when not admissible.

(1) The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subsections (2) and (3) of this section:

(a) Evidence offered to prove that any victim engaged in other sexual behavior; and

(b) Evidence offered to prove any victim's sexual predisposition.

(2)(a) In a criminal case, the following evidence is admissible, if otherwise admissible under the Nebraska Evidence Rules:

(i) Evidence of specific instances of sexual behavior by the victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;

(ii) Evidence of specific instances of sexual behavior of the victim with respect to the accused offered by the accused to prove consent of the victim if it is first established to the court that such behavior is similar to the behavior involved in the case and tends to establish a pattern of behavior of the victim relevant to the issue of consent; and

(iii) Evidence, the exclusion of which would violate the constitutional rights of the accused.

(b) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any victim is admissible if it is otherwise admissible under the Nebraska Evidence Rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of a victim's reputation is admissible only if it has been placed in controversy by the victim.

(3)(a) A party intending to offer evidence under subsection (2) of this section shall:

(i) File a written motion at least fifteen days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause, requires a different time for filing or permits filing during trial; and

(ii) Serve the motion on all parties and notify the victim or, when appropriate, the victim's guardian or representative.

(b) Before admitting evidence under this section, the court shall conduct a hearing in camera outside the presence of any jury.

(4) Evidence of the victim's consent is not admissible in any civil proceeding involving alleged:

(a) Sexual penetration when the actor is nineteen years of age or older and the victim is less than sixteen years of age; or

(b) Sexual contact when the actor is nineteen years of age or older and the victim is less than fifteen years of age.

Source: Laws 2009, LB97, § 3; Laws 2019, LB478, § 1.

27-413 Offense of sexual assault, defined.

For purposes of sections 27-414 and 27-415, offense of sexual assault means sexual assault under section 28-319 or 28-320, sexual abuse by a school employee under section 28-316.01, sexual assault of a child under section 28-319.01 or 28-320.01, sexual assault by use of an electronic communication device under section 28-320.02, sexual abuse of an inmate or parolee under sections 28-322.01 to 28-322.03, sexual abuse of a protected individual under section 28-322.04, sexual abuse of a detainee under section 28-322.05, an attempt or conspiracy to commit any of the crimes listed in this section, or the commission of or conviction for a crime in another jurisdiction that is substantially similar to any crime listed in this section.

Source: Laws 2009, LB97, § 4; Laws 2015, LB294, § 8; Laws 2019, LB519, § 3; Laws 2020, LB881, § 3.
Effective date November 14, 2020.

ARTICLE 7

OPINION AND EXPERT TESTIMONY

Section

27-707. Eyewitness identification and memory; expert witness; admissibility of testimony.

27-707 Eyewitness identification and memory; expert witness; admissibility of testimony.

The testimony of an expert witness regarding eyewitness identification and memory may be admitted in any criminal or civil proceeding pursuant to the rules governing admissibility of evidence set forth in the Nebraska Evidence Rules.

Source: Laws 2020, LB881, § 4.
Effective date November 14, 2020.

ARTICLE 8

HEARSAY

Section

27-801. Rule 801. Definitions; statement, declarant, hearsay; statements which are not hearsay.

27-801 Rule 801. Definitions; statement, declarant, hearsay; statements which are not hearsay.

The following definitions apply under this article:

(1) A statement is (a) an oral or written assertion or (b) nonverbal conduct of a person, if it is intended by him or her as an assertion;

(2) A declarant is a person who makes a statement;

(3) Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted; and

(4) A statement is not hearsay if:

(a) The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement (i) is inconsistent with his or her testimony and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, (ii) is consistent with his or her testimony and is offered to rebut an express or implied charge against him or her of recent fabrication or improper influence or motive, or (iii) identifies a person as someone the declarant perceived earlier; or

(b) The statement is offered against a party and is (i) his or her own statement, in either his or her individual or a representative capacity, (ii) a statement of which he or she has manifested his or her adoption or belief in its truth, (iii) a statement by a person authorized by him or her to make a statement concerning the subject, (iv) a statement by his or her agent or servant within the scope of his or her agency or employment, or (v) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

Source: Laws 1975, LB 279, § 55; Laws 2019, LB392, § 1.

Cross References

Electronic recording of statements in custodial interrogation, admissibility, see sections 29-4501 to 29-4508.

**ARTICLE 11
MISCELLANEOUS RULES**

Section
27-1103. Rule 1103. Act, how cited.

27-1103 Rule 1103. Act, how cited.

These rules may be known and cited as the Nebraska Evidence Rules.

Source: Laws 1975, LB 279, § 73; Laws 2009, LB97, § 8; Laws 2020, LB881, § 5.

Effective date November 14, 2020.

**CHAPTER 28
CRIMES AND PUNISHMENTS**

Article.

1. Provisions Applicable to Offenses Generally.
 - (a) General Provisions. 28-101 to 28-105.01.
 - (b) Discrimination-Based Offenses. 28-115.
 - (d) Victims of Sex Trafficking of a Minor or Labor Trafficking of a Minor. 28-117.
2. Inchoate Offenses. 28-201, 28-202.
3. Offenses against the Person.
 - (a) General Provisions. 28-303 to 28-347.06.
 - (b) Adult Protective Services Act. 28-358.01 to 28-378.
4. Drugs and Narcotics. 28-401 to 28-476.
5. Offenses against Property. 28-513.
6. Offenses Involving Fraud. 28-611 to 28-644.
7. Offenses Involving the Family Relation. 28-707 to 28-730.
8. Offenses Relating to Morals. 28-802 to 28-831.
9. Offenses Involving Integrity and Effectiveness of Government Operation. 28-902 to 28-936.
10. Offenses against Animals. 28-1009.01.
11. Gambling. 28-1107.
12. Offenses against Public Health and Safety. 28-1201 to 28-1212.03.
13. Miscellaneous Offenses.
 - (c) Telephone Communications. 28-1310.
 - (r) Unlawful Membership Recruitment. 28-1351.
 - (s) Public Protection Act. 28-1354, 28-1356.
14. Noncode Provisions.
 - (c) Tobacco, Electronic Nicotine Delivery Systems, or Alternative Nicotine Products. 28-1418 to 28-1429.03.
 - (k) Child Pornography Prevention Act. 28-1463.03, 28-1463.05.

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.
	(b) DISCRIMINATION-BASED OFFENSES
28-115.	Criminal offense against a pregnant woman; enhanced penalty.
	(d) VICTIMS OF SEX TRAFFICKING OF A MINOR OR LABOR TRAFFICKING OF A MINOR
28-117.	Department of Health and Human Services; information on programs and services.

(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; Laws 2018, LB931, § 1; Laws 2018, LB990, § 1; Laws 2019, LB7, § 1; Laws 2019, LB519, § 4; Laws 2019, LB686, § 1; Laws 2020, LB814, § 1; Laws 2020, LB881, § 6; Laws 2020, LB1152, § 14.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB814, section 1, with LB881, section 6, and LB1152, section 14, to reflect all amendments.

Note: Changes made by LB1152 became operative August 8, 2020. Changes made by LB814 and LB881 became effective November 14, 2020.

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:

PROVISIONS APPLICABLE TO OFFENSES GENERALLY

§ 28-105

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
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 none for post-release supervision

(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; Laws 2019, LB686, § 2.

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.

(b) DISCRIMINATION-BASED OFFENSES

28-115 Criminal offense against a pregnant woman; enhanced penalty.

(1) Except as provided in subsection (2) of this section, any person who commits any of the following criminal offenses against a pregnant woman shall

be punished by the imposition of the next higher penalty classification than the penalty classification prescribed for the criminal offense:

- (a) Assault in the first degree, section 28-308;
 - (b) Assault in the second degree, section 28-309;
 - (c) Assault in the third degree, section 28-310;
 - (d) Assault by strangulation or suffocation, section 28-310.01;
 - (e) Sexual assault in the first degree, section 28-319;
 - (f) Sexual assault in the second or third degree, section 28-320;
 - (g) Sexual assault of a child in the first degree, section 28-319.01;
 - (h) Sexual assault of a child in the second or third degree, section 28-320.01;
 - (i) Sexual abuse of an inmate or parolee in the first degree, section 28-322.02;
 - (j) Sexual abuse of an inmate or parolee in the second degree, section 28-322.03;
 - (k) Sexual abuse of a protected individual in the first or second degree, section 28-322.04;
 - (l) Sexual abuse of a detainee under section 28-322.05;
 - (m) Domestic assault in the first, second, or third degree, section 28-323;
 - (n) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree, section 28-929;
 - (o) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree, section 28-930;
 - (p) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree, section 28-931;
 - (q) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle, section 28-931.01;
 - (r) Assault by a confined person, section 28-932;
 - (s) Confined person committing offenses against another person, section 28-933; and
 - (t) Proximately causing serious bodily injury while operating a motor vehicle, section 60-6,198.
- (2) The enhancement in subsection (1) of this section does not apply to any criminal offense listed in subsection (1) of this section that is already punishable as a Class I, IA, or IB felony. If any criminal offense listed in subsection (1) of this section is punishable as a Class I misdemeanor, the penalty under this section is a Class IIIA felony.
- (3) The prosecution shall allege and prove beyond a reasonable doubt that the victim was pregnant at the time of the offense.

Source: Laws 2006, LB 57, § 9; Laws 2010, LB771, § 1; Laws 2014, LB811, § 1; Laws 2016, LB1094, § 4; Laws 2019, LB141, § 1; Laws 2019, LB519, § 5.

(d) VICTIMS OF SEX TRAFFICKING OF A MINOR
OR LABOR TRAFFICKING OF A MINOR**28-117 Department of Health and Human Services; information on programs and services.**

On or before December 1, 2019, the Department of Health and Human Services shall make publicly available information on programs and services available for referral by the department to respond to the safety and needs of children reported or suspected to be victims of sex trafficking of a minor or labor trafficking of a minor as defined in section 28-830 and their families. The department shall develop this information in consultation with representatives of child advocacy centers, behavioral health providers, child welfare and juvenile justice service providers, law enforcement representatives, and prosecutors.

Source: Laws 2019, LB519, § 12.

**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.
- 28-310.01. Assault by strangulation or suffocation; penalty; affirmative defense.
- 28-311.04. Stalking; violations; penalties.
- 28-311.08. Unlawful intrusion; photograph, film, or record image or video of intimate area; distribute or make public; penalty; court; duties; registration under Sex Offender Registration Act; statute of limitations.
- 28-311.09. Harassment protection order; violation; penalty; procedure; costs; enforcement.
- 28-311.11. Sexual assault protection order; violation; penalty; procedure; renewal; enforcement.
- 28-311.12. Foreign sexual assault protection order; enforcement.
- 28-316.01. Sexual abuse by a school employee; penalty.

Section

- 28-318. Terms, defined.
- 28-322. Sexual abuse of an inmate or parolee; terms, defined.
- 28-322.01. Sexual abuse of an inmate or parolee.
- 28-322.05. Sexual abuse of a detainee; penalty.
- 28-326. Terms, defined.
- 28-327. Abortion; voluntary and informed consent required; exception.
- 28-327.01. Department of Health and Human Services; printed materials; duties; availability; Internet web site information; reporting form; contents.
- 28-345. Department of Health and Human Services; permanent file; rules and regulations.
- 28-347. Dismemberment abortion; unlawful; when; medical emergency; Board of Medicine and Surgery; hearing; findings admissible at trial; persons not liable.
- 28-347.01. Dismemberment abortion; injunction; cause of action; who may maintain.
- 28-347.02. Dismemberment abortion; damages; cause of action; who may maintain.
- 28-347.03. Dismemberment abortion; cause of action; judgment; attorney's fees.
- 28-347.04. Dismemberment abortion; penalty.
- 28-347.05. Dismemberment abortion; action or proceeding; anonymity of woman; preserved; court order.
- 28-347.06. Dismemberment abortion; sections, how construed.

(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.
- 28-377. Records relating to abuse; access.
- 28-378. Records relating to abuse; release of information; when.

(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.

28-310.01 Assault by strangulation or suffocation; penalty; affirmative defense.

(1) A person commits the offense of assault by strangulation or suffocation if the person knowingly and intentionally:

- (a) Impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person; or
- (b) Impedes the normal breathing of another person by covering the mouth and nose of the person.

(2) An offense is committed under this section regardless of whether a visible injury resulted.

(3) Except as provided in subsection (4) of this section, a violation of this section is a Class IIIA felony.

(4) A violation of this section is a Class IIA felony if:

(a) The person used or attempted to use a dangerous instrument while committing the offense;

(b) The person caused serious bodily injury to the other person while committing the offense; or

(c) The person has been previously convicted of a violation of this section.

(5) It is an affirmative defense that an act constituting strangulation or suffocation was the result of a legitimate medical procedure.

Source: Laws 2004, LB 943, § 2; Laws 2015, LB605, § 13; Laws 2019, LB141, § 2.

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.

28-311.08 Unlawful intrusion; photograph, film, or record image or video of intimate area; distribute or make public; penalty; court; duties; registration under Sex Offender Registration Act; statute of limitations.

(1) It shall be unlawful for any person to knowingly intrude upon any other person without his or her consent in a place of solitude or seclusion. Violation of this subsection is a Class I misdemeanor. A second or subsequent violation of this subsection is a Class IV felony.

(2) It shall be unlawful for any person to knowingly and intentionally photograph, film, or otherwise record an image or video of the intimate area of any other person without his or her knowledge and consent when his or her intimate area would not be generally visible to the public regardless of whether

such other person is located in a public or private place. Violation of this subsection is a Class IV felony.

(3) It shall be unlawful for any person to knowingly and intentionally distribute or otherwise make public an image or video of another person recorded in violation of subsection (2) of this section without that person's consent. A first or second violation of this subsection is a Class IIA felony. A third or subsequent violation of this subsection is a Class II felony.

(4) It shall be unlawful for any person to knowingly and intentionally distribute or otherwise make public an image or video of another person's intimate area or of another person engaged in sexually explicit conduct (a) if the other person had a reasonable expectation that the image would remain private, (b) knowing the other person did not consent to distributing or making public the image or video, and (c) if distributing or making public the image or video serves no legitimate purpose. Violation of this subsection is a Class I misdemeanor. A second or subsequent violation of this subsection is a Class IV felony.

(5) It shall be unlawful for any person to threaten to distribute or otherwise make public an image or video of another person's intimate area or of another person engaged in sexually explicit conduct with the intent to intimidate, threaten, or harass any person. Violation of this subsection is a Class I misdemeanor.

(6) As part of sentencing following a conviction for a violation of subsection (1), (2), or (3) of this section, the court shall make a finding as to the ages of the defendant and the victim at the time the offense occurred. If the defendant is found to have been nineteen years of age or older and the victim is found to have been less than eighteen years of age at such time, then the defendant shall be required to register under the Sex Offender Registration Act.

(7) No person shall be prosecuted under this section unless the indictment for such offense is found by a grand jury or a complaint filed before a magistrate within three years after the later of:

(a) The commission of the crime;

(b) Law enforcement's or a victim's receipt of actual or constructive notice of either the existence of a video or other electronic recording made in violation of this section or the distribution of images, video, or other electronic recording made in violation of this section; or

(c) The youngest victim of a violation of this section reaching the age of twenty-one years.

(8) For purposes of this section:

(a) Intimate area means the naked or undergarment-clad genitalia, pubic area, buttocks, or female breast of an individual;

(b) Intrude means either:

(i) Viewing another person in a state of undress as it is occurring; or

(ii) Recording another person in a state of undress by video, photographic, digital, or other electronic means; and

(c) Place of solitude or seclusion means a place where a person would intend to be in a state of undress and have a reasonable expectation of privacy,

including, but not limited to, any facility, public or private, used as a restroom, tanning booth, locker room, shower room, fitting room, or dressing room.

Source: Laws 1996, LB 908, § 1; Laws 2011, LB61, § 1; Laws 2014, LB998, § 2; Laws 2015, LB605, § 17; Laws 2019, LB630, § 1.

Cross References

Sex Offender Registration Act, see section 29-4001.

28-311.09 Harassment protection order; violation; penalty; procedure; costs; enforcement.

(1) Any victim who has been harassed as defined by section 28-311.02 may file a petition and affidavit for a harassment 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 harassment 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. The harassment protection order shall specify to whom relief under this section was granted.

(2) The petition for a harassment protection order shall state the events and dates or approximate dates of acts constituting the alleged harassment, including the most recent and most severe incident or incidents.

(3) A petition for a harassment 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 harassment protection order filed pursuant to subsection (1) of this section may not be withdrawn except upon order of the court. An order issued pursuant to subsection (1) of this section shall specify that it is effective for a period of one year unless otherwise dismissed or modified by the court. Any person, except the petitioner, who knowingly violates an order issued pursuant to subsection (1) of this section after service or notice as described in subdivision (9)(b) of this section shall be guilty of a Class II misdemeanor.

(5)(a) Fees to cover costs associated with the filing of a petition for a harassment protection order or the issuance or service of a harassment 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 harassment protection order was sought in bad faith.

(b) A court may also assess costs associated with the filing of a petition for a harassment protection order or the issuance or service of a harassment 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 a harassment protection order with instructions for completion to be used by a petitioner. Affidavit forms shall request all relevant information, including, but not limited to: A description of the incidents that are the basis for the application for a harassment protection order, including the most severe incident, and the date or approximate date of such incidents.

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 ex parte and final harassment protection order forms and provide a copy of such forms to all clerks of the district courts in this state. These standard temporary ex parte and final harassment protection order forms shall be the only such forms used in this state.

(7) Any order issued under subsection (1) of this section may be issued 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, 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. Any notice provided to the respondent shall include notification that a court may treat a petition for a harassment protection order as a petition for a sexual assault protection order or a domestic abuse protection order if it appears from the facts that such other protection order is more appropriate and that the respondent shall have an opportunity to show cause as to why such protection order should not be entered. If such ex parte order is issued 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 ten business days after service upon him or her. Upon receipt of a timely 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. If a petition is dismissed without a hearing, it shall be dismissed without prejudice. The petition and affidavit shall be deemed to have been offered into evidence at any show-cause hearing. The petition and affidavit shall be admitted into evidence unless specifically excluded by the court.

(8) A court may treat a petition for a harassment protection order as a petition for a sexual assault protection order or a domestic abuse protection order if it appears from the facts in the petition, affidavit, and evidence presented at a show-cause hearing that such other protection order is more appropriate and if:

(a) The court makes specific findings that such other order is more appropriate; or

(b) The petitioner has requested the court to so treat the petition.

(9)(a) Upon the issuance of any temporary ex parte or final harassment 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 harassment 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 harassment protection order upon the respondent and file its return thereon with the clerk of the court which issued the harassment protection order within fourteen days of the issuance of the harassment protection order. If any harassment 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 harassment protection order is not dismissed, such respondent shall be deemed to have notice by the court at such hearing that the harassment 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.

(c) A temporary ex parte harassment protection order shall be affirmed and deemed the final protection order and service of the temporary ex parte order shall be notice of the final protection order if the respondent has been properly served with the ex parte order and:

(i) The respondent fails to request a show-cause hearing within ten business days after service upon him or her and no hearing was requested by the petitioner or upon the court's own motion;

(ii) The respondent has been properly served with notice of any hearing requested by the respondent or petitioner or upon the court's own motion and the respondent fails to appear at such hearing; or

(iii) The respondent has been properly served with notice of any hearing requested by the respondent, the petitioner, or upon the court's own motion and the protection order was not dismissed at the hearing.

(10) A peace officer may, 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 harassment protection order issued pursuant to this section or a violation of a valid foreign harassment protection order recognized pursuant to section 28-311.10 and (b) a petitioner under this section provides the peace officer with a copy of a harassment protection order or the peace officer determines that such an order exists after communicating with the local law enforcement agency or a person protected under a valid foreign harassment protection order recognized pursuant to section 28-311.10 provides the peace officer with a copy of such order.

(11) A peace officer making an arrest pursuant to subsection (10) of this section shall take such person into custody and take such person before the county court or the court which issued the harassment 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 harassment.

(12) When provided by the petitioner, the court shall make confidential numeric victim identification information, including social security numbers and dates of birth, available to appropriate criminal justice agencies engaged in protection order enforcement efforts. Such agencies shall maintain the confidentiality of this information except for entry into state and federal data bases for protection order enforcement.

Source: Laws 1998, LB 218, § 6; Laws 2012, LB310, § 1; Laws 2019, LB532, § 1.

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. The sexual assault protection order shall specify to whom relief under this section was granted.

(2) The petition for a sexual assault protection order shall state the events and dates or approximate dates of acts constituting the sexual assault offense, including the most recent and most severe incident or incidents.

(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 (12) of this section or otherwise dismissed or modified by the court. Any person, except the petitioner, who knowingly violates a sexual assault protection order after service or notice as described in subdivision (9)(b) of this section shall be guilty of a Class I misdemeanor, except that any person convicted of violating such order who has a prior conviction for violating a sexual assault protection order 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. Affidavit

forms shall request all relevant information, including, but not limited to: A description of the most recent incident that was the basis for the application for a sexual assault protection order and the date or approximate date of the incident and, if there was more than one incident, the most severe incident and the date or approximate date of such incident. 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 ex parte 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 ex parte 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 a sexual assault protection order is not issued ex parte, the court shall immediately schedule an evidentiary hearing to be held within fourteen days after the filing of the petition, and the court shall cause notice of the application to be given to the respondent stating that he or she may show cause why such order should not be entered. Any notice provided to the respondent shall include notification that a court may treat a petition for a sexual assault protection order as a petition for a harassment protection order or a domestic abuse protection order if it appears from the facts that such other protection order is more appropriate and that the respondent shall have an opportunity to show cause as to why such protection 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 ten business days after service upon him or her. Upon receipt of a timely 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. The petition and affidavit shall be deemed to have been offered into evidence at any show-cause hearing. The petition and affidavit shall be admitted into evidence unless specifically excluded by the court.

(8) A court may treat a petition for a sexual assault protection order as a petition for a harassment protection order or a domestic abuse protection order if it appears from the facts in the petition, affidavit, and evidence presented at a show-cause hearing that such other protection order is more appropriate and if:

- (a) The court makes specific findings that such other order is more appropriate; or
- (b) The petitioner has requested the court to so treat the petition.

(9)(a) Upon the issuance or renewal of any temporary ex parte or final 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.

(c) A temporary ex parte sexual assault protection order shall be affirmed and deemed the final protection order and service of the temporary ex parte order shall be notice of the final protection order if the respondent has been properly served with the ex parte order and:

(i) The respondent fails to request a show-cause hearing within ten business days after service upon him or her and no hearing was requested by the petitioner or upon the court's own motion;

(ii) The respondent has been properly served with notice of any hearing requested by the respondent or petitioner or upon the court's own motion and the respondent fails to appear at such hearing; or

(iii) The respondent has been properly served with notice of any hearing requested by the respondent, the petitioner, or upon the court's own motion and the protection order was not dismissed at the hearing.

(10) 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.

(11) A peace officer making an arrest pursuant to subsection (10) 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.

(12)(a) 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 any time within forty-five days prior to the date the order is set to expire, including the date the order expires.

(b) A sexual assault protection order may be renewed on the basis of the petitioner's affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested renewal if:

(i) The petitioner seeks no modification of the order; and

(ii)(A) The respondent has been properly served with notice of the petition for renewal and notice of hearing and fails to appear at the hearing; or

(B) The respondent indicates that he or she does not contest the renewal.

(c) 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 (11) of this section. The renewed order shall specify that it is effective for one year commencing on the first calendar day after expiration of the previous order or on the calendar day the court grants the renewal if such day is subsequent to the first calendar day after expiration of the previous order.

(13) When provided by the petitioner, the court shall make confidential numeric victim identification information, including social security numbers and dates of birth, available to appropriate criminal justice agencies engaged in protection order enforcement efforts. Such agencies shall maintain the confidentiality of this information, except for entry into state and federal data bases for protection order enforcement.

(14) For purposes of this section, sexual assault offense means:

(a) Conduct amounting to sexual assault under section 28-319 or 28-320, sexual abuse by a school employee under section 28-316.01, 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; Laws 2019, LB532, § 2; Laws 2020, LB881, § 7.

Effective date November 14, 2020.

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.

28-316.01 Sexual abuse by a school employee; penalty.

(1) For purposes of this section:

(a) Sexual contact has the same meaning as in section 28-318;

(b) Sexual penetration has the same meaning as in section 28-318;

(c) School employee means a person nineteen years of age or older who is employed by a public, private, denominational, or parochial school approved or accredited by the State Department of Education; and

(d) Student means a person at least sixteen but not more than nineteen years of age enrolled in or attending a public, private, denominational, or parochial school approved or accredited by the State Department of Education, or who was such a person enrolled in or who attended such a school within ninety days of any violation of this section.

(2) A person commits the offense of sexual abuse by a school employee if a school employee subjects a student in the school to which such employee is assigned for work to sexual penetration or sexual contact, or engages in a pattern or scheme of conduct to subject a student in the school to which such employee is assigned for work to sexual penetration or sexual contact. It is not a defense to a charge under this section that the student consented to such sexual penetration or sexual contact.

(3) Any school employee who engages in sexual penetration with a student is guilty of sexual abuse by a school employee in the first degree. Sexual abuse by a school employee in the first degree is a Class IIA felony.

(4) Any school employee who engages in sexual contact with a student is guilty of sexual abuse by a school employee in the second degree. Sexual abuse by a school employee in the second degree is a Class IIIA felony.

(5) Any school employee who engages in a pattern or scheme of conduct with the intent to subject a student to sexual penetration or sexual contact is guilty of

sexual abuse by a school employee in the third degree. Sexual abuse by a school employee in the third degree is a Class IV felony.

Source: Laws 2020, LB881, § 12.

Effective date November 14, 2020.

28-318 Terms, defined.

As used in sections 28-317 to 28-322.05, unless the context otherwise requires:

- (1) Actor means a person accused of sexual assault;
- (2) Intimate parts means the genital area, groin, inner thighs, buttocks, or breasts;
- (3) Past sexual behavior means sexual behavior other than the sexual behavior upon which the sexual assault is alleged;
- (4) Serious personal injury means great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;
- (5) Sexual contact means the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact also means the touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact includes only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party. Sexual contact also includes the touching of a child with the actor's sexual or intimate parts on any part of the child's body for purposes of sexual abuse by a school employee under section 28-316.01 or sexual assault of a child under sections 28-319.01 and 28-320.01;
- (6) Sexual penetration means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical, nonhealth, or nonlaw enforcement purposes. Sexual penetration shall not require emission of semen;
- (7) Victim means the person alleging to have been sexually assaulted;
- (8) Without consent means:
 - (a)(i) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any was actually given, was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor;
 - (b) The victim need only resist, either verbally or physically, so as to make the victim's refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; and
 - (c) A victim need not resist verbally or physically where it would be useless or futile to do so; and

(9) Force or threat of force means (a) the use of physical force which overcomes the victim's resistance or (b) the threat of physical force, express or implied, against the victim or a third person that places the victim in fear of death or in fear of serious personal injury to the victim or a third person where the victim reasonably believes that the actor has the present or future ability to execute the threat.

Source: Laws 1977, LB 38, § 33; Laws 1978, LB 701, § 1; Laws 1984, LB 79, § 3; Laws 1985, LB 2, § 2; Laws 1995, LB 371, § 3; Laws 2004, LB 943, § 4; Laws 2006, LB 1199, § 4; Laws 2009, LB97, § 11; Laws 2019, LB519, § 6; Laws 2020, LB881, § 8.
Effective date November 14, 2020.

28-322 Sexual abuse of an inmate or parolee; terms, defined.

For purposes of sections 28-322 to 28-322.03:

(1) Inmate or parolee means any individual confined in a facility operated by the Department of Correctional Services or a city or county correctional or jail facility or under parole supervision; and

(2) Person means (a) an individual employed by the Department of Correctional Services or by the Division of Parole Supervision, including any individual working in central administration of the department, any individual working under contract with the department, and any individual, other than an inmate's spouse, to whom the department has authorized or delegated control over an inmate or an inmate's activities, (b) an individual employed by a city or county correctional or jail facility, including any individual working in central administration of the city or county correctional or jail facility, any individual working under contract with the city or county correctional or jail facility, and any individual, other than an inmate's spouse, to whom the city or county correctional or jail facility has authorized or delegated control over an inmate or an inmate's activities, and (c) an individual employed by the Office of Probation Administration who performs official duties within any facility operated by the Department of Correctional Services or a city or county correctional or jail facility.

Source: Laws 1999, LB 511, § 2; Laws 2001, LB 155, § 1; Laws 2004, LB 943, § 5; Laws 2018, LB841, § 1.

28-322.01 Sexual abuse of an inmate or parolee.

(1) A person commits the offense of sexual abuse of an inmate or parolee if such person subjects an inmate or parolee to sexual penetration or sexual contact as those terms are defined in section 28-318. It is not a defense to a charge under this section that the inmate or parolee consented to such sexual penetration or sexual contact.

(2) An otherwise lawful pat-down or body cavity search by a person is not a violation of this section.

Source: Laws 1999, LB 511, § 3; Laws 2001, LB 155, § 2; Laws 2004, LB 943, § 6; Laws 2019, LB519, § 7.

28-322.05 Sexual abuse of a detainee; penalty.

(1) For purposes of this section:

(a) Detainee means an individual who has been:

(i) Arrested by a person;

(ii) Detained by a person, regardless of whether the detainee has been arrested or charged; or

(iii) Placed into the custody of a person, regardless of whether the detainee has been arrested or charged;

(b) Law enforcement agency means an agency or department of this state or of any political subdivision of this state which is responsible for the prevention and detection of crime; the enforcement of the penal, traffic, or highway laws of this state or any political subdivision of this state; and the enforcement of arrest warrants. Law enforcement agency includes a police department, an office of the town marshal, an office of the county sheriff, the Nebraska State Patrol, and any department to which a deputy state sheriff is assigned as provided in section 84-106; and

(c) Person means an individual:

(i) Who is employed by a law enforcement agency, including an individual working under contract with the agency;

(ii) To whom the law enforcement agency has authorized or delegated authority to make arrests, to place a detainee in detention or custody, or to otherwise exercise control over a detainee or a detainee's activities; and

(iii) Who is not the spouse of a detainee.

(2) A person commits the offense of sexual abuse of a detainee if the person engages in sexual penetration or sexual contact with a detainee. It is not a defense to a charge under this section that the detainee consented to such sexual penetration or sexual contact.

(3) An otherwise lawful pat-down or body cavity search by a person is not a violation of this section.

(4) Any person who engages in sexual penetration with a detainee is guilty of sexual abuse of a detainee in the first degree. Sexual abuse of a detainee in the first degree is a Class IIA felony.

(5) Any person who engages in sexual contact with a detainee is guilty of sexual abuse of a detainee in the second degree. Sexual abuse of a detainee in the second degree is a Class IIIA felony.

Source: Laws 2019, LB519, § 8.

28-326 Terms, defined.

For purposes of sections 28-325 to 28-345 and 28-347 to 28-347.06, unless the context otherwise requires:

(1) Abortion means the use or prescription of any instrument, medicine, drug, or other substance or device intentionally to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child, and which causes the premature termination of the pregnancy;

(2) Complications associated with abortion means any adverse physical, psychological, or emotional reaction that is reported in a peer-reviewed journal to be statistically associated with abortion such that there is less than a five percent probability ($P < .05$) that the result is due to chance;

- (3) Conception means the fecundation of the ovum by the spermatozoa;
- (4)(a) Dismemberment abortion means an abortion in which, with the purpose of causing the death of an unborn child, a person purposely dismembers the body of a living unborn child and extracts him or her one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors, or similar instruments that, through the convergence of two rigid levers, slice, crush, or grasp a portion of the unborn child's body to cut or rip it off.
- (b) Dismemberment abortion does not include:
- (i) An abortion in which suction is used to dismember the body of an unborn child by sucking fetal parts into a collection container; or
- (ii) The use of instruments or suction to remove the remains of an unborn child who has already died;
- (5) Emergency situation means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial impairment of a major bodily function;
- (6) Hospital means those institutions licensed by the Department of Health and Human Services pursuant to the Health Care Facility Licensure Act;
- (7) Negligible risk means a risk that a reasonable person would consider to be immaterial to a decision to undergo an elective medical procedure;
- (8) Partial-birth abortion means an abortion procedure in which the person performing the abortion partially delivers vaginally a living unborn child before killing the unborn child and completing the delivery. For purposes of this subdivision, the term partially delivers vaginally a living unborn child before killing the unborn child means deliberately and intentionally delivering into the vagina a living unborn child, or a substantial portion thereof, for the purpose of performing a procedure that the person performing such procedure knows will kill the unborn child and does kill the unborn child;
- (9) Physician means any person licensed to practice medicine in this state as provided in the Uniform Credentialing Act;
- (10) Pregnant means that condition of a woman who has unborn human life within her as the result of conception;
- (11) Probable gestational age of the unborn child means what will with reasonable probability, in the judgment of the physician, be the gestational age of the unborn child at the time the abortion is planned to be performed;
- (12) Risk factor associated with abortion means any factor, including any physical, psychological, emotional, demographic, or situational factor, for which there is a statistical association with one or more complications associated with abortion such that there is less than a five percent probability ($P < .05$) that such statistical association is due to chance. Such information on risk factors shall have been published in any peer-reviewed journals indexed by the United States National Library of Medicine's search services (PubMed or MEDLINE) or in any journal included in the Thomson Reuters Scientific Master Journal List not less than twelve months prior to the day preabortion screening was provided;
- (13) Self-induced abortion means any abortion or menstrual extraction attempted or completed by a pregnant woman on her own body;

(14) Ultrasound means the use of ultrasonic waves for diagnostic or therapeutic purposes, specifically to monitor an unborn child;

(15) Viability means that stage of human development when the unborn child is potentially able to live more than merely momentarily outside the womb of the mother by natural or artificial means; and

(16) Woman means any female human being whether or not she has reached the age of majority.

Source: Laws 1977, LB 38, § 41; Laws 1979, LB 316, § 1; Laws 1984, LB 695, § 1; Laws 1986, LB 663, § 1; Laws 1993, LB 110, § 1; Laws 1996, LB 1044, § 59; Laws 1997, LB 23, § 2; Laws 2000, LB 819, § 64; Laws 2007, LB296, § 27; Laws 2009, LB675, § 1; Laws 2010, LB594, § 3; Laws 2020, LB814, § 2.
Effective date November 14, 2020.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.

28-327 Abortion; voluntary and informed consent required; exception.

No abortion shall be performed except with the voluntary and informed consent of the woman upon whom the abortion is to be performed. Except in the case of an emergency situation, consent to an abortion is voluntary and informed only if:

(1) The woman is told the following by the physician who is to perform the abortion, by the referring physician, or by a physician assistant or registered nurse licensed under the Uniform Credentialing Act who is an agent of either physician, at least twenty-four hours before the abortion:

(a) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, perforated uterus, danger to subsequent pregnancies, and infertility;

(b) The probable gestational age of the unborn child at the time the abortion is to be performed;

(c) The medical risks associated with carrying her child to term;

(d) That she cannot be forced or required by anyone to have an abortion and is free to withhold or withdraw her consent for an abortion; and

(e) Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you change your mind and want to continue your pregnancy after taking mifepristone, information on finding immediate medical assistance is available on the web site of the Department of Health and Human Services.

The person providing the information specified in this subdivision to the person upon whom the abortion is to be performed shall be deemed qualified to so advise and provide such information only if, at a minimum, he or she has had training in each of the following subjects: Sexual and reproductive health; abortion technology; contraceptive technology; short-term counseling skills; community resources and referral; and informed consent. The physician or the physician's agent may provide this information by telephone without conducting a physical examination or tests of the patient, in which case the information required to be supplied may be based on facts supplied by the patient and

whatever other relevant information is reasonably available to the physician or the physician's agent;

(2) The woman is informed by telephone or in person, by the physician who is to perform the abortion, by the referring physician, or by an agent of either physician, at least twenty-four hours before the abortion:

(a) The name of the physician who will perform the abortion;

(b) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(c) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion;

(d) That she has the right to review the printed materials described in section 28-327.01. The physician or his or her agent shall orally inform the woman that the materials have been provided by the Department of Health and Human Services and that they describe the unborn child, list agencies which offer alternatives to abortion, and include information on finding immediate medical assistance if she changes her mind after taking mifepristone and wants to continue her pregnancy. If the woman chooses to review the materials, they shall either be given to her at least twenty-four hours before the abortion or mailed to her at least seventy-two hours before the abortion by certified mail, restricted delivery to addressee, which means the postal employee can only deliver the mail to the addressee. The physician and his or her agent may disassociate themselves from the materials and may comment or refrain from commenting on them as they choose; and

(e) That she has the right to request a comprehensive list, compiled by the Department of Health and Human Services, of health care providers, facilities, and clinics that offer to have ultrasounds performed by a person at least as qualified as a registered nurse licensed under the Uniform Credentialing Act, including and specifying those that offer to perform such ultrasounds free of charge. The list shall be arranged geographically and shall include the name, address, hours of operation, and telephone number of each entity. If requested by the woman, the physician who is to perform the abortion, the referring physician, or his or her agent shall provide such a list as compiled by the department;

(3) If an ultrasound is used prior to the performance of an abortion, the physician who is to perform the abortion, the referring physician, or a physician assistant or registered nurse licensed under the Uniform Credentialing Act who is an agent of either physician, or any qualified agent of either physician, shall:

(a) Perform an ultrasound of the woman's unborn child of a quality consistent with standard medical practice in the community at least one hour prior to the performance of the abortion;

(b) Simultaneously display the ultrasound images so that the woman may choose to view the ultrasound images or not view the ultrasound images. The woman shall be informed that the ultrasound images will be displayed so that she is able to view them. Nothing in this subdivision shall be construed to require the woman to view the displayed ultrasound images; and

(c) If the woman requests information about the displayed ultrasound image, her questions shall be answered. If she requests a detailed, simultaneous, medical description of the ultrasound image, one shall be provided that in-

cludes the dimensions of the unborn child, the presence of cardiac activity, if present and viewable, and the presence of external members and internal organs, if present and viewable;

(4) At least one hour prior to the performance of an abortion, a physician, psychiatrist, psychologist, mental health practitioner, physician assistant, registered nurse, or social worker licensed under the Uniform Credentialing Act has:

(a) Evaluated the pregnant woman to identify if the pregnant woman had the perception of feeling pressured or coerced into seeking or consenting to an abortion;

(b) Evaluated the pregnant woman to identify the presence of any risk factors associated with abortion;

(c) Informed the pregnant woman and the physician who is to perform the abortion of the results of the evaluation in writing. The written evaluation shall include, at a minimum, a checklist identifying both the positive and negative results of the evaluation for each risk factor associated with abortion and both the licensed person's written certification and the woman's written certification that the pregnant woman was informed of the risk factors associated with abortion as discussed; and

(d) Retained a copy of the written evaluation results in the pregnant woman's permanent record;

(5) If any risk factors associated with abortion were identified, the pregnant woman was informed of the following in such manner and detail that a reasonable person would consider material to a decision of undergoing an elective medical procedure:

(a) Each complication associated with each identified risk factor; and

(b) Any quantifiable risk rates whenever such relevant data exists;

(6) The physician performing the abortion has formed a reasonable medical judgment, documented in the permanent record, that:

(a) The preponderance of statistically validated medical studies demonstrates that the physical, psychological, and familial risks associated with abortion for patients with risk factors similar to the patient's risk factors are negligible risks;

(b) Continuance of the pregnancy would involve risk of injury to the physical or mental health of the pregnant woman greater than if the pregnancy were terminated by induced abortion; or

(c) Continuance of the pregnancy would involve less risk of injury to the physical or mental health of the pregnant woman than if the pregnancy were terminated by an induced abortion;

(7) The woman certifies in writing, prior to the abortion, that:

(a) The information described in subdivisions (1) and (2)(a), (b), and (c) of this section has been furnished her;

(b) She has been informed of her right to review the information referred to in subdivision (2)(d) of this section; and

(c) The requirements of subdivision (3) of this section have been performed if an ultrasound is performed prior to the performance of the abortion; and

(8) Prior to the performance of the abortion, the physician who is to perform the abortion or his or her agent receives a copy of the written certification prescribed by subdivision (7) of this section. The physician or his or her agent

shall retain a copy of the signed certification form in the woman's medical record.

Source: Laws 1977, LB 38, § 42; Laws 1979, LB 316, § 2; Laws 1984, LB 695, § 2; Laws 1993, LB 110, § 2; Laws 1996, LB 1044, § 60; Laws 2009, LB675, § 2; Laws 2010, LB594, § 4; Laws 2019, LB209, § 1.

Cross References

Uniform Credentialing Act, see section 38-101.

28-327.01 Department of Health and Human Services; printed materials; duties; availability; Internet web site information; reporting form; contents.

(1) The Department of Health and Human Services shall cause to be published the following easily comprehensible printed materials:

(a) Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies and agencies and services for prevention of unintended pregnancies, which materials shall include a comprehensive list of the agencies available, a description of the services they offer, and a description of the manner, including telephone numbers and addresses in which such agencies may be contacted or printed materials including a toll-free, twenty-four-hour-a-day telephone number which may be called to orally obtain such a list and description of agencies in the locality of the caller and of the services they offer;

(b) Materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including pictures or drawings representing the development of unborn children at the two-week gestational increments, and any relevant information on the possibility of the unborn child's survival. Any such pictures or drawings shall contain the dimensions of the unborn child and shall be realistic and appropriate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages. The materials shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure, the possible detrimental psychological effects of abortion, the medical risks commonly associated with abortion, and the medical risks commonly associated with carrying a child to term;

(c) A comprehensive list of health care providers, facilities, and clinics that offer to have ultrasounds performed by a person at least as qualified as a registered nurse licensed under the Uniform Credentialing Act, including and specifying those that offer to perform such ultrasounds free of charge. The list shall be arranged geographically and shall include the name, address, hours of operation, and telephone number of each entity;

(d) Materials designed to inform the woman that she may still have a viable pregnancy after taking mifepristone. The materials shall include the following statements: "Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you change your mind and want to continue your pregnancy after taking mifepristone, it may not be too late."; and

(e) Materials, including contact information, that will assist the woman in finding a medical professional who can help her continue her pregnancy after taking mifepristone.

(2) The printed materials shall be printed in a typeface large enough to be clearly legible.

(3) The printed materials required under this section shall be available from the department upon the request by any person, facility, or hospital for an amount equal to the cost incurred by the department to publish the materials.

(4) The Department of Health and Human Services shall make available on its Internet web site a printable publication of geographically indexed materials designed to inform the woman of public and private agencies with services available to assist a woman with mental health concerns, following a risk factor evaluation. Such services shall include, but not be limited to, outpatient and crisis intervention services and crisis hotlines. The materials shall include a comprehensive list of the agencies available, a description of the services offered, and a description of the manner in which such agencies may be contacted, including addresses and telephone numbers of such agencies, as well as a toll-free, twenty-four-hour-a-day telephone number to be provided by the department which may be called to orally obtain the names of the agencies and the services they provide in the locality of the woman. The department shall update the publication as necessary.

(5) The Department of Health and Human Services shall publish and make available on its web site materials designed to inform the woman that she may still have a viable pregnancy after taking mifepristone. The materials shall include the following statements: "Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you change your mind and want to continue your pregnancy after taking mifepristone, it may not be too late." The materials shall also include information, including contact information, that will assist the woman in finding a medical professional who can help her continue her pregnancy after taking mifepristone.

(6) The Department of Health and Human Services shall review and update, as necessary, the materials, including contact information, regarding medical professionals who can help a woman continue her pregnancy after taking mifepristone.

(7)(a) The Department of Health and Human Services shall prescribe a reporting form which shall be used for the reporting of every attempt at continuing a woman's pregnancy after taking mifepristone as described in this section performed in this state. Such form shall include the following items:

- (i) The age of the pregnant woman;
- (ii) The location of the facility where the service was performed;
- (iii) The type of service provided;
- (iv) Complications, if any;
- (v) The name of the attending medical professional;
- (vi) The pregnant woman's obstetrical history regarding previous pregnancies, abortions, and live births;
- (vii) The state of the pregnant woman's legal residence;

(viii) Whether an emergency situation caused the physician to waive any of the requirements of section 28-327; and

(ix) Such other information as may be prescribed in accordance with section 71-602.

(b) The completed form shall be signed by the attending medical professional and sent to the department within fifteen days after each reporting month. The completed form shall be an original, typed or written legibly in durable ink, and shall not be deemed complete unless the omission of any item of information required shall have been disclosed or satisfactorily accounted for. Carbon copies shall not be acceptable. The reporting form shall not include the name of the person for whom the service was provided. The reporting form shall be confidential and shall not be revealed except upon the order of a court of competent jurisdiction in a civil or criminal proceeding.

Source: Laws 1993, LB 110, § 3; Laws 1996, LB 1044, § 61; Laws 2009, LB675, § 3; Laws 2010, LB594, § 12; Laws 2019, LB209, § 2.

Cross References

Uniform Credentialing Act, see section 38-101.

28-345 Department of Health and Human Services; permanent file; rules and regulations.

The Department of Health and Human Services shall prepare and keep on permanent file compilations of the information submitted on the abortion reporting forms and reporting forms regarding attempts at continuing a woman's pregnancy after taking mifepristone pursuant to such rules and regulations as established by the department, which compilations shall be a matter of public record. Under no circumstances shall the compilations of information include the name of any attending physician or identify in any respect facilities where abortions are performed. The department, in order to maintain and keep such compilations current, shall file with such reports any new or amended information.

Source: Laws 1977, LB 38, § 60; Laws 1979, LB 316, § 10; Laws 1996, LB 1044, § 64; Laws 2007, LB296, § 30; Laws 2019, LB209, § 3.

28-347 Dismemberment abortion; unlawful; when; medical emergency; Board of Medicine and Surgery; hearing; findings admissible at trial; persons not liable.

(1) It shall be unlawful for any person to purposely perform or attempt to perform a dismemberment abortion and thereby kill an unborn child unless a dismemberment abortion is necessary due to a medical emergency as defined in subdivision (4) of section 28-3,103.

(2) A person accused in any proceeding of unlawful conduct under subsection (1) of this section may seek a hearing before the Board of Medicine and Surgery on whether the performance of a dismemberment abortion was necessary due to a medical emergency as defined in subdivision (4) of section 28-3,103. The board's findings are admissible on that issue at any trial in which such unlawful conduct is alleged. Upon a motion of the person accused, the court shall delay the beginning of the trial for not more than thirty days to permit such a hearing to take place.

(3) No woman upon whom an abortion is performed or attempted to be performed shall be liable for performing or attempting to perform a dismemberment abortion. No nurse, secretary, receptionist, or other employee or agent who is not a physician, but who acts at the direction of a physician, shall be liable for performing or attempting to perform a dismemberment abortion. No pharmacist or other individual who is not a physician, but who fills a prescription or provides instruments or materials used in an abortion at the direction of or to a physician, shall be liable for performing or attempting to perform a dismemberment abortion.

Source: Laws 2020, LB814, § 3.
Effective date November 14, 2020.

28-347.01 Dismemberment abortion; injunction; cause of action; who may maintain.

(1) A cause of action for injunctive relief against a person who has performed a dismemberment abortion in violation of section 28-347 may be maintained by:

- (a) A woman upon whom such a dismemberment abortion was performed;
- (b) If the woman had not attained the age of nineteen years at the time of the dismemberment abortion, a person who is the parent or guardian of the woman upon whom such a dismemberment abortion was performed; or
- (c) A prosecuting attorney with appropriate jurisdiction.

(2) The injunction shall prevent the defendant from performing or attempting to perform dismemberment abortions in this state in violation of section 28-347.

(3) A cause of action may not be maintained by a plaintiff if the pregnancy resulted from the plaintiff's criminal conduct.

Source: Laws 2020, LB814, § 4.
Effective date November 14, 2020.

28-347.02 Dismemberment abortion; damages; cause of action; who may maintain.

(1) A cause of action for civil damages against a person who performed a dismemberment abortion in violation of section 28-347 may be maintained by:

- (a) Any woman upon whom a dismemberment abortion has been performed in violation of section 28-347;
- (b) The father of the unborn child, if married to the woman at the time the dismemberment abortion was performed; or
- (c) If the woman had not attained the age of nineteen years at the time of the dismemberment abortion or has died as a result of the abortion, the maternal grandparents of the unborn child.

(2) No damages may be awarded a plaintiff if the pregnancy resulted from the plaintiff's criminal conduct.

(3) Damages awarded in such an action shall include money damages for all injuries, psychological and physical, occasioned by the dismemberment abortion.

Source: Laws 2020, LB814, § 5.
Effective date November 14, 2020.

28-347.03 Dismemberment abortion; cause of action; judgment; attorney's fees.

(1) If judgment is rendered in favor of the plaintiff in an action described in section 28-347.01 or 28-347.02, the court shall also render judgment for reasonable attorney's fees in favor of the plaintiff against the defendant.

(2) If judgment is rendered in favor of the defendant in an action described in section 28-347.01 or 28-347.02 and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall render judgment for reasonable attorney's fees in favor of the defendant against the plaintiff.

(3) No attorney's fees may be assessed against the woman upon whom an abortion was performed or attempted to be performed except in accordance with subsection (2) of this section.

Source: Laws 2020, LB814, § 6.
Effective date November 14, 2020.

28-347.04 Dismemberment abortion; penalty.

The intentional and knowing performance of an unlawful dismemberment abortion in violation of section 28-347 is a Class IV felony.

Source: Laws 2020, LB814, § 7.
Effective date November 14, 2020.

28-347.05 Dismemberment abortion; action or proceeding; anonymity of woman; preserved; court order.

In every civil, criminal, or administrative proceeding or action brought under sections 28-347 to 28-347.04, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted to be performed shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted to be performed, any person other than a public official who brings an action under section 28-347.01 or 28-347.02 shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

Source: Laws 2020, LB814, § 8.
Effective date November 14, 2020.

28-347.06 Dismemberment abortion; sections, how construed.

Nothing in sections 28-347 to 28-347.04 shall be construed as creating or recognizing a right to abortion or a right to a particular method of abortion.

Source: Laws 2020, LB814, § 9.

Effective date November 14, 2020.

(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.

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.

28-377 Records relating to abuse; access.

Except as otherwise provided in sections 28-376 to 28-380, no person, official, or agency shall have access to the records relating to abuse unless in furtherance of purposes directly connected with the administration of the Adult Protective Services Act and section 28-726. Persons, officials, and agencies having access to such records shall include, but not be limited to:

(1) A law enforcement agency investigating a report of known or suspected abuse;

(2) A county attorney in preparation of an abuse petition;

(3) A physician who has before him or her a person whom he or she reasonably suspects may be abused;

(4) An agency having the legal responsibility or authorization to care for, treat, or supervise an abused vulnerable adult;

(5) Defense counsel in preparation of the defense of a person charged with abuse;

(6) Any person engaged in bona fide research or auditing, except that no information identifying the subjects of the report shall be made available to the researcher or auditor. The researcher shall be charged for any costs of such research incurred by the department at a rate established by rules and regulations adopted and promulgated by the department;

(7) The designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000, as the act existed on September 1, 2001, and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801, as the act existed on

September 1, 2001, acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness; and

(8) The department, as required or authorized by state law, federal law, federal regulation, or applicable federal program provisions and in furtherance of its programs.

Source: Laws 1988, LB 463, § 30; Laws 1992, LB 643, § 1; Laws 2001, LB 214, § 1; Laws 2007, LB296, § 33; Laws 2020, LB1148, § 1. Effective date November 14, 2020.

28-378 Records relating to abuse; release of information; when.

The department or appropriate law enforcement agency shall provide requested information to any person legally authorized by sections 28-376 to 28-380 to have access to records relating to abuse when ordered by a court of competent jurisdiction or upon compliance by such person with identification requirements established by rules and regulations of the department or law enforcement agency. Such information shall not include the name and address of the person making the report, except that the department may use the name and address as required or authorized by state law, federal law, federal regulation, or applicable federal program provisions and in furtherance of its programs and the county attorney's office may request and receive the name and address of the person making the report with such person's written consent. The name and other identifying data of any person requesting or receiving information from the registry and the dates and the circumstances under which requests are made or information is released shall be entered in the registry.

Source: Laws 1988, LB 463, § 31; Laws 2020, LB1148, § 2. Effective date November 14, 2020.

ARTICLE 4

DRUGS AND NARCOTICS

Section	
28-401.	Terms, defined.
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28-416.	Prohibited acts; violations; penalties.
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28-442.	Drug paraphernalia; deliver or manufacture; unlawful; exception; penalty.
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28-473.	Transferred to section 38-1,144.
28-474.	Transferred to section 38-1,145.
28-475.	Opiates; receipt; identification required.
28-476.	Hemp; carry or transport; requirements; peace officer; powers; violation; penalty.

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 through V of section 28-405. Controlled substance does not include distilled spirits, wine, malt beverages, tobacco, hemp, 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) Hemp has the same meaning as in section 2-503;

(14)(a) 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.

(b) Marijuana 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.

(c) Marijuana does not include hemp.

(d) 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.

(e) 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;

(15) 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;

(16) 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;

(17) 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;

(18) Opium poppy means the plant of the species *Papaver somniferum* L., except the seeds thereof;

(19) Poppy straw means all parts, except the seeds, of the opium poppy after mowing;

(20) Person means any corporation, association, partnership, limited liability company, or one or more persons;

(21) 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, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of practice or research in this state, including an emergency medical service as defined in section 38-1207;

(22) Production includes the manufacture, planting, cultivation, or harvesting of a controlled substance;

(23) 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;

(24) State means the State of Nebraska;

(25) 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;

(26) Hospital has the same meaning as in section 71-419;

(27) 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;

(28)(a) Hashish or concentrated cannabis means (i) the separated resin, whether crude or purified, obtained from a plant of the genus *cannabis* or (ii) any material, preparation, mixture, compound, or other substance which contains ten percent or more by weight of tetrahydrocannabinols.

(b) When resins extracted from (i) industrial hemp as defined in section 2-5701 are in the possession of a person as authorized under section 2-5701 or (ii) hemp as defined in section 2-503 are in the possession of a person as authorized under the Nebraska Hemp Farming Act, they are not considered hashish or concentrated cannabis for purposes of the Uniform Controlled Substances Act;

(29) 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;

(30) 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;

(31)(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;

(32) 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;

(33) 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;

(34) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(35) Prescription means an order for a controlled substance issued by a practitioner. Prescription does not include a chart order;

(36) 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;

(37) 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;

(38) 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;

(39) 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;

(40) Electronic signature has the definition found in section 86-621;

(41) Electronic transmission means transmission of information in electronic form. Electronic transmission includes computer-to-computer transmission or computer-to-facsimile transmission;

(42) 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 substance use treatment center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

(43) Compounding has the same meaning as in section 38-2811;

(44) 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

(45) 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; Laws 2018, LB1034, § 1; Laws 2019, LB657, § 22.

Cross References

Health Care Facility Licensure Act, see section 71-401.

Nebraska Hemp Farming Act, see section 2-501.

28-401.01 Act, how cited.

Sections 28-401 to 28-456.01 and 28-458 to 28-476 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; Laws 2018, LB931, § 2; Laws 2020, LB1152, § 15.

Operative date August 8, 2020.

28-405 Controlled substances; schedules; enumerated.

The following are the schedules of controlled substances referred to in the Uniform Controlled Substances Act, unless specifically contained on the list of exempted products of the Drug Enforcement Administration of the United States Department of Justice as the list existed on November 9, 2017:

Schedule I

(a) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetylmethadol;
- (2) Allylprodine;
- (3) Alphacetylmethadol, except levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;
- (4) Alphameprodine;
- (5) Alphamethadol;
- (6) Benzethidine;
- (7) Betacetylmethadol;
- (8) Betameprodine;
- (9) Betamethadol;
- (10) Betaprodine;
- (11) Clonitazene;
- (12) Dextromoramide;
- (13) Difenoxin;
- (14) Diampromide;
- (15) Diethylthiambutene;
- (16) Dimenoxadol;
- (17) Dimepheptanol;
- (18) Dimethylthiambutene;
- (19) Dioxaphetyl butyrate;
- (20) Dipipanone;
- (21) Ethylmethylthiambutene;
- (22) Etonitazene;
- (23) Etoxidine;
- (24) Furethidine;
- (25) Hydroxypethidine;
- (26) Ketobemidone;
- (27) Levomoramide;
- (28) Levophenacymorphan;
- (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-piperidiny)-N-phenylacetamide, its optical isomers, salts, and salts of isomers;
- (50) Alpha-methylthiofentanyl, N-(1-methyl-2-(2-thienyl)ethyl-4-piperidiny)-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-piperidiny)-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-piperidiny)-N-phenylpropanamide), its optical and geometric isomers, salts, and salts of isomers;
- (54) 3-methylthiofentanyl, N-(3-methyl-1-(2-thienyl)ethyl-4-piperidiny)-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-piperidiny)-propanamide, its optical isomers, salts, and salts of isomers;
- (57) Para-fluorofentanyl, N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidiny)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) Hydromorphenol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine; and
- (23) Thebacon.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, and, for purposes of this subdivision only, isomer shall include the optical, position, and geometric isomers:

(1) Bufotenine. Trade and other names shall include, but are not limited to: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; and mappine;

(2) 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 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; TCP; 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) Naphthylmethylinindoles: 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) Naphthoylpyrroles: 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 tetrahydropyranymethyl 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 tetrahydropyranymethyl 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-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranymethyl 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 tetrahydropyranymethyl 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 tetrahydropyranymethyl 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-naphthyl, 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 tetrahydropyranymethyl 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-naphthyl, 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-methylenedioxymethcathinone, or bk-MDMA, or methylone;
 - (ii) 3,4-methylenedioxypropylone, 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)-propionophenone; alpha-(methylamino)propionophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropionophenone; 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 or ecgonine 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;
- (28) Tapentadol; and
- (29) Thiafentanil.

(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; and

(2) Dronabinol in an oral solution in a drug product approved by the federal Food and Drug Administration.

(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 November 9, 2017, 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-hydroxyandrostan[2,3-c]-furazan);
- (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]-androstan-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]-androstan-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);

(3) Pregabalin ((S)-3-(aminomethyl)-5-methylhexanoic acid); and

(4) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide) (also referred to as BRV; UCB-34714; Briviact), including its salts.

(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; Laws 2018, LB906, § 1.

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.

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.

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.

28-414.01 Controlled substance; Schedule III, IV, or V; medical order, required; prescription; contents; pharmacist; authority to adapt prescription; duties.

(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) A pharmacist who is exercising reasonable care and who has obtained patient consent may do the following:

(i) Change the quantity of a drug prescribed if:

(A) The prescribed quantity or package size is not commercially available; or

(B) The change in quantity is related to a change in dosage form;

(ii) Change the dosage form of the prescription if it is in the best interest of the patient and if the directions for use are also modified to equate to an equivalent amount of drug dispensed as prescribed;

(iii) Dispense multiple months' supply of a drug if a prescription is written with sufficient refills; and

(iv) Substitute any chemically equivalent drug product for a prescribed drug to comply with a drug formulary which is covered by the patient's health insurance plan unless the prescribing practitioner specifies "no substitution", "dispense as written", or "D.A.W." to indicate that substitution is not permitted. If a pharmacist substitutes any chemically equivalent drug product as permitted under this subdivision, the pharmacist shall provide notice to the prescribing practitioner or the prescribing practitioner's designee. If drug product selection occurs involving a generic substitution, the drug product selection shall comply with section 38-28,111.

(b) A pharmacist who adapts a prescription in accordance with this subsection shall document the adaptation in the patient's pharmacy record.

(4) 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.

(5) 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; Laws 2020, LB1052, § 1.

Effective date November 14, 2020.

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.

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.

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.

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.

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 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 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 or law enforcement employee who, acting in good faith, obtains naloxone from the peace officer's or employee'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 or employee 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 or employee'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 or practicing pursuant to the EMS Personnel Licensure Interstate Compact;

(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) Law enforcement employee means an employee of a law enforcement agency, a contractor of a law enforcement agency, or an employee of such contractor who regularly, as part of his or her duties, handles, processes, or is likely to come into contact with any evidence or property which may include or contain opioids;

(g) Naloxone means naloxone hydrochloride; and

(h) Peace officer has the same meaning as in section 49-801.

Source: Laws 2015, LB390, § 11; Laws 2017, LB487, § 9; Laws 2018, LB923, § 1; Laws 2018, LB1034, § 2.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.

EMS Personnel Licensure Interstate Compact, see section 38-3801.

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.

28-473 Transferred to section 38-1,144.

28-474 Transferred to section 38-1,145.

28-475 Opiates; receipt; identification required.

(1) Unless the individual taking receipt of dispensed opiates listed in Schedule II, III, or IV of section 28-405 is personally and positively known to the pharmacist or dispensing practitioner, the individual shall display a valid driver's or operator's license, a state identification card, a military identification card, an alien registration card, or a passport as proof of identification.

(2) This section does not apply to a patient who is a resident of a health care facility licensed pursuant to the Health Care Facility Licensure Act.

Source: Laws 2018, LB931, § 5.

Cross References

Health Care Facility Licensure Act, see section 71-401.

28-476 Hemp; carry or transport; requirements; peace officer; powers; violation; penalty.

(1) Any person other than the Department of Agriculture, a cultivator, a processor-handler, or an approved testing facility who is transporting hemp shall carry with such hemp being transported (a) a bill of lading indicating the owner of the hemp, the point of origin of the hemp, and the destination of the hemp and (b) either a copy of the test results pertaining to such hemp or other documentation affirming that the hemp was produced in compliance with the federal Agriculture Improvement Act of 2018.

(2)(a) No person shall carry or transport hemp in this state unless such hemp is:

(i) Produced in compliance with:

(A) For hemp originating in this state, the requirements of the federal Agriculture Improvement Act of 2018 under the Nebraska Hemp Farming Act and any rules and regulations adopted and promulgated thereunder, a tribal hemp production plan approved by the United States Secretary of Agriculture, or the United States Department of Agriculture Domestic Hemp Production Plan; or

(B) For hemp originating outside this state, the requirements of the federal Agriculture Improvement Act of 2018; and

(ii) Carried or transported as provided in section 2-515 or subsection (1) of this section.

(b) No person shall transport hemp in this state concurrently with any other plant material that is not hemp.

(3)(a) A peace officer may detain any person carrying or transporting hemp in this state if such person does not provide the documentation required by this section and section 2-515. Unless the peace officer has probable cause to believe the hemp is, or is being carried or transported with, marijuana or any other controlled substance, the peace officer shall immediately release the hemp and the person carrying or transporting such hemp upon production of such documentation.

(b) The failure of a person detained as described in this subsection to produce documentation required by this section shall constitute probable cause to believe the hemp may be marijuana or another controlled substance. In such case, a peace officer may collect such hemp for testing to determine the delta-9 tetrahydrocannabinol concentration in the hemp, and, if the peace officer has probable cause to believe the person detained is carrying or transporting marijuana or any other controlled substance in violation of state or federal law, the peace officer may seize and impound the hemp or marijuana or other controlled substance and arrest such person.

(c) This subsection does not limit or restrict in any way the power of a peace officer to enforce violations of the Uniform Controlled Substances Act and federal law regulating marijuana and other controlled substances.

(4) In addition to any other penalties provided by law, including those imposed under the Nebraska Hemp Farming Act, any person who intentionally

violates this section shall be guilty of a Class IV misdemeanor and fined not more than one thousand dollars.

(5) This section does not apply to a person transporting hemp products purchased at retail in small amounts for personal or household use and not intended for resale.

(6) For purposes of this section:

(a) Agriculture Improvement Act of 2018 has the same meaning as in section 2-503;

(b) Approved testing facility has the same meaning as in section 2-503;

(c) Cultivator has the same meaning as in section 2-503; and

(d) Processor-handler has the same meaning as in section 2-503.

Source: Laws 2020, LB1152, § 16.

Operative date August 8, 2020.

Cross References

Nebraska Hemp Farming Act, see section 2-501.

ARTICLE 5

OFFENSES AGAINST PROPERTY

Section

28-513. Theft by extortion.

28-513 Theft by extortion.

(1) A person commits theft if he or she obtains property, money, or other thing of value of another by threatening to:

(a) Inflict bodily injury on anyone or commit any other criminal offense;

(b) Accuse anyone of a criminal offense;

(c) Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his or her credit or business repute;

(d) Take or withhold action as an official, or cause an official to take or withhold action;

(e) Bring about or continue a strike, boycott, or other collective unofficial action, if the property, money, or other thing of value is not demanded or received for the benefit of the group in whose interest the actor purports to act;

(f) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(g) Distribute or otherwise make public an image or video of a person's intimate area or of a person engaged in sexually explicit conduct without that person's consent.

(2) It is an affirmative defense to prosecution based on subdivision (1)(b), (1)(c), or (1)(d) of this section that the property, money, or other thing of value obtained by threat of accusation, exposure, lawsuit, or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstances to which such accusation, exposure, lawsuit, or other official action relates, or as compensation for property or lawful services.

Source: Laws 1977, LB 38, § 112; Laws 2019, LB630, § 2.

ARTICLE 6
OFFENSES INVOLVING FRAUD

Section

- 28-611. Issuing or passing a bad check or similar order; penalty; collection procedures.
28-612. False statement or book entry; destruction or secretion of records; penalty.
28-632. Payment cards; terms, defined.
28-634. Payment cards; prohibited acts relating to scanning device or encoding machine; violation; penalty.
28-635. Repealed. Laws 2019, LB7, § 7.
28-641. Counterfeit airbags; act, how cited.
28-642. Counterfeit airbags; terms, defined.
28-643. Counterfeit airbags; prohibited acts.
28-644. Counterfeit airbags; violations; penalties.

28-611 Issuing or passing a bad check or similar order; penalty; collection procedures.

(1) Whoever obtains property, services, child support credit, spousal support credit, or present value of any kind by issuing or passing a check, draft, assignment of funds, or similar signed order for the payment of money, knowing that he or she does not have sufficient funds in or credit with the drawee for the payment of the check, draft, assignment of funds, or order in full upon presentation, commits the offense of issuing a bad check. Issuing a bad check is:

(a) A Class IIA felony if the amount of the check, draft, assignment of funds, or order is five thousand dollars or more;

(b) A Class IV felony if the amount of the check, draft, assignment of funds, or order is one thousand five hundred dollars or more, but less than five thousand dollars;

(c) A Class I misdemeanor if the amount of the check, draft, assignment of funds, or order is five hundred dollars or more, but less than one thousand five hundred dollars; and

(d) A Class II misdemeanor if the amount of the check, draft, assignment of funds, or order is less than five hundred dollars.

(2) The aggregate amount of any series of checks, drafts, assignments, or orders issued or passed within a sixty-day period in one county may be used in determining the classification of the offense pursuant to subsection (1) of this section, except that checks, drafts, assignments, or orders may not be aggregated into more than one offense.

(3) For any second or subsequent offense under subdivision (1)(c) or (1)(d) of this section, any person so offending shall be guilty of a Class IV felony.

(4) Whoever otherwise issues or passes a check, draft, assignment of funds, or similar signed order for the payment of money, knowing that he or she does not have sufficient funds in or credit with the drawee for the payment of the check, draft, assignment of funds, or order in full upon its presentation, shall be guilty of a Class II misdemeanor.

(5) Any person in violation of this section who makes voluntary restitution to the injured party for the value of the check, draft, assignment of funds, or order shall also pay ten dollars to the injured party and any reasonable handling fee imposed on the injured party by a financial institution.

(6) In any prosecution for issuing a bad check, the person issuing the check, draft, assignment of funds, or order shall be presumed to have known that he or she did not have sufficient funds in or credit with the drawee for the payment of the check, draft, assignment of funds, or order in full upon presentation if, within thirty days after issuance of the check, draft, assignment of funds, or order, he or she was notified that the drawee refused payment for lack of funds and he or she failed within ten days after such notice to make the check, draft, assignment of funds, or order good or, in the absence of such notice, he or she failed to make the check, draft, assignment of funds, or order good within ten days after notice that such check, draft, assignment of funds, or order has been returned to the depositor was sent to him or her by the county attorney or his or her deputy, by United States mail addressed to such person at his or her last-known address. Upon request of the depositor and the payment of ten dollars for each check, draft, assignment of funds, or order, the county attorney or his or her deputy shall be required to mail notice to the person issuing the check, draft, assignment of funds, or order as provided in this subsection. The ten-dollar payment shall be payable to the county treasurer and credited to the county general fund. No such payment shall be collected from any county office to which such a check, draft, assignment of funds, or order is issued in the course of the official duties of the office.

(7) Any person convicted of violating this section may, in addition to a fine or imprisonment, be ordered to make restitution to the party injured for the value of the check, draft, assignment of funds, or order and to pay ten dollars to the injured party and any reasonable handling fee imposed on the injured party by a financial institution. If the court, in addition to sentencing any person to imprisonment under this section, also enters an order of restitution, the time permitted to make such restitution shall not be concurrent with the sentence of imprisonment.

(8) The fact that restitution to the party injured has been made and that ten dollars and any reasonable handling fee imposed on the injured party by a financial institution have been paid to the injured party shall be a mitigating factor in the imposition of punishment for any violation of this section.

Source: Laws 1977, LB 38, § 133; Laws 1978, LB 748, § 8; Laws 1983, LB 208, § 1; Laws 1985, LB 445, § 1; Laws 1987, LB 254, § 1; Laws 1992, LB 111, § 3; Laws 2009, LB155, § 15; Laws 2015, LB605, § 34; Laws 2019, LB514, § 1.

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.

Cross References

Credit Union Act, see section 21-1701.

Nebraska Trust Company Act, see section 8-201.01.

28-632 Payment cards; terms, defined.

For purposes of this section and sections 28-633 and 28-634:

(1) Encoding machine means an electronic device that is used to encode information onto a payment card;

(2) Merchant means:

(a) An owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or operator;

(b) An establishing financial institution as defined in section 8-157.01; or

(c) A person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing, or receiving goods, services, money, or anything else of value from the person;

(3) Payment card means a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant;

(4) Person means an individual, firm, partnership, association, corporation, limited liability company, or other business entity; and

(5) Scanning device means a scanner, a reader, a wireless access device, a radio-frequency identification scanner, near-field communication technology, or any other electronic device that is used to access, read, scan, obtain,

memorize, or store, temporarily or permanently, information encoded on a payment card.

Source: Laws 2002, LB 276, § 4; Laws 2018, LB773, § 1.

28-634 Payment cards; prohibited acts relating to scanning device or encoding machine; violation; penalty.

(1) It is unlawful for a person to intentionally and knowingly:

(a) Use a scanning device to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on a payment card without the permission of the authorized user of the payment card, the issuer of the authorized user's payment card, or a merchant;

(b) Possess a scanning device with the intent to obtain information encoded on a payment card without the permission of the authorized user, the issuer of the authorized user's payment card, or a merchant or possess a scanning device with knowledge that some other person intends to use the scanning device to obtain information encoded on a payment card without the permission of the authorized user, the issuer of the authorized user's payment card, or a merchant;

(c) Use an encoding machine to place information encoded on a payment card onto a different card without the permission of the authorized user of the card from which the information was obtained, the issuer of the authorized user's payment card, or a merchant; or

(d) Possess an encoding machine with the intent to place information encoded on a payment card onto a different payment card without the permission of the user, the issuer of the authorized user's payment card, or a merchant.

(2) A violation of this section is a Class IV felony for the first offense and a Class IIIA felony for a second or subsequent offense.

Source: Laws 2002, LB 276, § 6; Laws 2018, LB773, § 2.

28-635 Repealed. Laws 2019, LB7, § 7.

28-641 Counterfeit airbags; act, how cited.

Sections 28-641 to 28-644 shall be known and may be cited as the Counterfeit Airbag Prevention Act.

Source: Laws 2019, LB7, § 2.

28-642 Counterfeit airbags; terms, defined.

For purposes of the Counterfeit Airbag Prevention Act, unless the context otherwise requires:

(1) Airbag means a motor vehicle inflatable occupant restraint system device that is part of a supplemental restraint system;

(2) Counterfeit supplemental restraint system component means a supplemental restraint system component that displays a mark identical or substantially similar to the genuine mark of a motor vehicle manufacturer or a supplier of parts to the manufacturer of a motor vehicle without authorization from such manufacturer or supplier;

(3) Nonfunctional airbag means an airbag that meets any of the following criteria:

- (a) The airbag was previously deployed or damaged;
 - (b) The airbag has an electric fault that is detected by the motor vehicle's diagnostic system when the installation procedure is completed and (i) the motor vehicle is returned to the customer who requested the work to be performed or (ii) ownership is intended to be transferred;
 - (c) The airbag includes a part or object installed in a motor vehicle to mislead the owner or operator of the motor vehicle into believing that a functional airbag has been installed; or
 - (d) The airbag is subject to the prohibitions of subsection (j) of 49 U.S.C. 30120, as such section existed on January 1, 2019; and
- (4) Supplemental restraint system means an inflatable restraint system as defined in 49 C.F.R. 571.208, as such regulation existed on January 1, 2019, designed for use in conjunction with an active safety system. A supplemental restraint system includes one or more airbags and all components required to ensure that an airbag works as designed by the motor vehicle manufacturer, including both of the following:
- (a) The airbag operates as necessary in the event of a crash; and
 - (b) The airbag is designed in accordance with federal motor vehicle safety standards for the specific make, model, and year of the motor vehicle in which it is or will be installed.

Source: Laws 2019, LB7, § 3.

28-643 Counterfeit airbags; prohibited acts.

A person violates the Counterfeit Airbag Prevention Act if the person does any of the following:

- (1) Knowingly and intentionally manufactures, imports, installs, reinstalls, distributes, sells, or offers for sale any device intended to replace a supplemental restraint system component in any motor vehicle if the device is a counterfeit supplemental restraint system component or a nonfunctional airbag or does not meet federal safety requirements as provided in 49 C.F.R. 571.208, as such regulation existed on January 1, 2019;
- (2) Knowingly and intentionally sells, installs, or reinstalls a device that causes a motor vehicle's diagnostic system to fail to warn when the motor vehicle is equipped with a counterfeit supplemental restraint system component or a nonfunctional airbag or when no airbag is installed;
- (3) Knowingly and intentionally represents to another person that a counterfeit supplemental restraint system component or nonfunctional airbag installed in a motor vehicle is not a counterfeit supplemental restraint system component or a nonfunctional airbag; or
- (4) Causes another person to violate this section or assists another person in violating this section.

Source: Laws 2019, LB7, § 4.

28-644 Counterfeit airbags; violations; penalties.

- (1) Except as otherwise provided in this section, a violation of the Counterfeit Airbag Prevention Act is a Class IV felony.
- (2) A violation of the act is a Class IIIA felony if the defendant has been previously convicted of a violation of the act.

(3) A violation of the act is a Class III felony if the violation resulted in an individual suffering bodily injury.

(4) A violation of the act is a Class IIA felony if the violation resulted in an individual suffering serious bodily injury.

(5) A violation of the act is a Class II felony if the violation resulted in the death of an individual.

Source: Laws 2019, LB7, § 5.

ARTICLE 7

OFFENSES INVOLVING THE FAMILY RELATION

Section

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28-707 Child abuse; privileges not available; penalties.

(1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

(a) Placed in a situation that endangers his or her life or physical or mental health;

(b) Cruelly confined or cruelly punished;

(c) Deprived of necessary food, clothing, shelter, or care;

(d) Placed in a situation to be sexually exploited through sex trafficking of a minor as defined in section 28-830 or by allowing, encouraging, or forcing such minor child to engage in debauchery, public indecency, or obscene or pornographic photography, films, or depictions;

(e) Placed in a situation to be sexually abused as defined in section 28-319, 28-319.01, or 28-320.01; or

(f) Placed in a situation to be a trafficking victim as defined in section 28-830.

(2) The statutory privilege between patient and physician, between client and professional counselor, and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this section.

(3) Child abuse is a Class I misdemeanor if the offense is committed negligently and does not result in serious bodily injury as defined in section 28-109 or death.

(4) Child abuse is a Class IIIA felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury as defined in section 28-109 or death.

(5) Child abuse is a Class IIIA felony if the offense is committed negligently and results in serious bodily injury as defined in section 28-109.

(6) Child abuse is a Class IIA felony if the offense is committed negligently and results in the death of such child.

(7) Child abuse is a Class II felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.

(8) Child abuse is a Class IB felony if the offense is committed knowingly and intentionally and results in the death of such child.

(9) For purposes of this section, negligently refers to criminal negligence and means that a person knew or should have known of the danger involved and acted recklessly, as defined in section 28-109, with respect to the safety or health of the minor child.

Source: Laws 1977, LB 38, § 146; Laws 1982, LB 347, § 10; Laws 1993, LB 130, § 3; Laws 1993, LB 430, § 3; Laws 1994, LB 908, § 1; Laws 1996, LB 645, § 15; Laws 1997, LB 364, § 9; Laws 2006, LB 1199, § 9; Laws 2010, LB507, § 3; Laws 2012, LB799, § 2; Laws 2013, LB255, § 1; Laws 2015, LB605, § 44; Laws 2019, LB519, § 9.

Cross References

Appointment of guardian ad litem, see section 43-272.01.

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-710 Act, how cited; terms, defined.

(1) Sections 28-710 to 28-727 shall be known and may be cited as the Child Protection and Family Safety Act.

(2) For purposes of the Child Protection and Family Safety Act:

(a) Alternative response means a comprehensive assessment of (i) child safety, (ii) the risk of future child abuse or neglect, (iii) family strengths and needs, and (iv) the provision of or referral for necessary services and support. Alternative response is an alternative to traditional response and does not include an investigation or a formal determination as to whether child abuse or neglect has occurred, and the subject of the report shall not be entered into the central registry of child protection cases maintained pursuant to section 28-718;

(b) Child abuse or neglect means knowingly, intentionally, or negligently causing or permitting a minor child to be:

(i) Placed in a situation that endangers his or her life or physical or mental health;

(ii) Cruelly confined or cruelly punished;

(iii) Deprived of necessary food, clothing, shelter, or care;

(iv) Left unattended in a motor vehicle if such minor child is six years of age or younger;

(v) Placed in a situation to be sexually abused;

(vi) Placed in a situation to be sexually exploited through sex trafficking of a minor as defined in section 28-830 or by allowing, encouraging, or forcing such person to engage in debauchery, public indecency, or obscene or pornographic photography, films, or depictions; or

(vii) Placed in a situation to be a trafficking victim as defined in section 28-830;

(c) Child advocacy center means a community-based organization that (i) provides an appropriate site for conducting forensic interviews as defined in section 28-728 and referring victims of child abuse or neglect and appropriate caregivers for such victims to needed evaluation, services, and supports, (ii) assists county attorneys in facilitating case reviews, developing and updating protocols, and arranging training opportunities for the teams established pursuant to sections 28-728 and 28-729, and (iii) is a member, in good standing, of a state chapter as defined in 34 U.S.C. 20302;

(d) Comprehensive assessment means an analysis of child safety, risk of future child abuse or neglect, and family strengths and needs on a report of child abuse or neglect using an evidence-informed and validated tool. Comprehensive assessment does not include a finding as to whether the child abuse or neglect occurred but does determine the need for services and support, if any, to address the safety of children and the risk of future abuse or neglect;

(e) Department means the Department of Health and Human Services;

(f) Investigation means fact gathering by the department, using an evidence-informed and validated tool, or by law enforcement related to the current safety of a child and the risk of future child abuse or neglect that determines whether child abuse or neglect has occurred and whether child protective services are needed;

(g) Kin caregiver means a person with whom a child in foster care has been placed or with whom a child is residing pursuant to a temporary living arrangement in a non-court-involved case, who has previously lived with or is a trusted adult that has a preexisting, significant relationship with the child or with a sibling of such child placed pursuant to section 43-1311.02;

(h) Law enforcement agency means the police department or town marshal in incorporated municipalities, the office of the sheriff in unincorporated areas, and the Nebraska State Patrol;

(i) Non-court-involved case means an ongoing case opened by the department following a report of child abuse or neglect in which the department has determined that ongoing services are required to maintain the safety of a child or alleviate the risk of future abuse or neglect and in which the family voluntarily engages in child protective services without a filing in a juvenile court;

(j) Out-of-home child abuse or neglect means child abuse or neglect occurring outside of a child's family home, including in day care homes, foster homes, day care centers, residential child-caring agencies as defined in section 71-1926, other child care facilities or institutions, and the community. Out-of-home child abuse or neglect also includes cases in which the subject of the report of child abuse or neglect is not a member of the child's household, no longer has access to the child, is unknown, or cannot be identified;

(k) Relative caregiver means a person with whom a child is placed by the department and who is related to the child, or to a sibling of such child pursuant to section 43-1311.02, by blood, marriage, or adoption or, in the case of an Indian child, is an extended family member as defined in section 43-1503;

(l) Report means any communication received by the department or a law enforcement agency pursuant to the Child Protection and Family Safety Act that describes child abuse or neglect and contains sufficient content to identify the child who is the alleged victim of child abuse or neglect;

(m) Review, Evaluate, and Decide Team means an internal team of staff within the department and shall include no fewer than two supervisors or administrators and two staff members knowledgeable on the policies and practices of the department, including, but not limited to, the structured review process. County attorneys, child advocacy centers, or law enforcement agency personnel may attend team reviews upon request of a party;

(n) School employee means a person nineteen years of age or older who is employed by a public, private, denominational, or parochial school approved or accredited by the State Department of Education;

(o) Student means a person less than nineteen years of age enrolled in or attending a public, private, denominational, or parochial school approved or accredited by the State Department of Education, or who was such a person enrolled in or who attended such a school within ninety days of any violation of section 28-316.01;

(p) Traditional response means an investigation by a law enforcement agency or the department pursuant to section 28-713 which requires a formal determination of whether child abuse or neglect has occurred; and

(q) Subject of the report of child abuse or neglect or subject of the report means the person or persons identified in the report as responsible for the child abuse or neglect.

Source: Laws 1977, LB 38, § 149; Laws 1979, LB 505, § 1; Laws 1982, LB 522, § 3; Laws 1985, LB 447, § 10; Laws 1988, LB 463, § 42; Laws 1992, LB 1184, § 9; Laws 1994, LB 1035, § 2; Laws 1996, LB 1044, § 71; Laws 1997, LB 119, § 1; Laws 2005, LB 116, § 1; Laws 2013, LB265, § 29; Laws 2014, LB853, § 1; Laws 2019, LB519, § 10; Laws 2020, LB881, § 9; Laws 2020, LB1061, § 1. Effective date November 14, 2020.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB881, section 9, with LB1061, section 1, to reflect all amendments.

28-710.01 Legislative declarations.

(1) The Legislature declares that the public policy of the State of Nebraska is to protect children whose health or welfare may be jeopardized by abuse or neglect. The Legislature recognizes that most families want to keep their children safe, but circumstances or conditions sometimes interfere with their

ability to do so. Families and children are best served by interventions that engage their protective capacities and address immediate safety concerns and ongoing risks of child abuse or neglect. In furtherance of this public policy and the family policy and principles set forth in sections 43-532 and 43-533, it is the intent of the Legislature to strengthen the family and make the home, school, and community safe for children by promoting responsible child care in all settings and to provide, when necessary, a safe temporary or permanent home environment for abused or neglected children.

(2) In addition, it is the policy of this state to: Require the reporting of child abuse or neglect in home, school, and community settings; provide for alternative response to reports as permitted by law and the rules and regulations of the department; provide for traditional response to reports as required by law and the rules and regulations of the department; and provide protective and supportive services designed to preserve and strengthen the family in appropriate cases.

Source: Laws 2014, LB853, § 2; Laws 2020, LB1061, § 2.
Effective date November 14, 2020.

28-712 Reports of child abuse or neglect; department; determination; alternative response; department; use; advisory committee; recommendations; rules and regulations.

(1) Upon receipt of a report pursuant to section 28-711, the department shall determine whether to (a) accept the report for traditional response and an investigation pursuant to section 28-713, (b) accept the report for alternative response pursuant to section 28-712.01, (c) accept the report for screening by the Review, Evaluate, and Decide Team to determine eligibility for alternative response, or (d) classify the report as requiring no further action by the department.

(2)(a) The Nebraska Children's Commission shall appoint an advisory committee to examine the department's alternative response to reports of child abuse or neglect and to make recommendations to the Legislature, the department, and the commission regarding (i) the receipt and screening of reports of child abuse or neglect by the department, (ii) the ongoing use of alternative response, (iii) the ongoing use of traditional response, and (iv) the provision of services within alternative response and non-court-involved cases to ensure child safety, to reduce the risk of child abuse or neglect, and to engage families. The advisory committee may request, receive, and review data from the department regarding such processes.

(b) The members of the advisory committee shall include, but not be limited to, a representative of (i) the department, (ii) law enforcement agencies, (iii) county attorneys or other prosecutors, (iv) the state chapter of child advocacy centers as defined in 34 U.S.C. 20302, (v) attorneys for parents, (vi) guardians ad litem, (vii) a child welfare advocacy organization, (viii) families with experience in the child welfare system, (ix) family caregivers, (x) the Foster Care Review Office, and (xi) the office of Inspector General of Nebraska Child Welfare. Members of the advisory committee shall be appointed for terms of two years. The Nebraska Children's Commission shall appoint the chairperson of the advisory committee and may fill vacancies on the advisory committee as they occur.

(3) The department shall adopt and promulgate rules and regulations to carry out this section and sections 28-710.01, 28-712.01, and 28-713. Such rules and regulations shall include, but not be limited to, provisions on (a) the transfer of cases from alternative response to traditional response, (b) 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, (c) the provision of services through alternative response, and (d) the collection, sharing, and reporting of data.

Source: Laws 2014, LB853, § 3; Laws 2017, LB225, § 1; Laws 2020, LB1061, § 3.

Effective date November 14, 2020.

28-712.01 Reports of child abuse or neglect; alternative response assigned; criteria; Review, Evaluate, and Decide Team; duties; department; duties; Inspector General's review.

(1)(a) The department may assign a report for alternative response consistent with the Child Protection and Family Safety Act.

(b) No report involving any of the following shall be assigned to alternative response but shall be immediately forwarded to law enforcement or the county attorney:

(i) Murder in the first or second degree as defined in section 28-303 or 28-304 or manslaughter as defined in section 28-305;

(ii) Assault in the first, second, or third degree or assault by strangulation or suffocation as defined in section 28-308, 28-309, 28-310, or 28-310.01;

(iii) Sexual abuse, including acts prohibited by section 28-319, 28-319.01, 28-320, 28-320.01, 28-320.02, 28-322.01, 28-322.02, 28-322.03, 28-322.04, 28-322.05, 28-703, or 28-707;

(iv) Labor trafficking of a minor or sex trafficking of a minor as defined in section 28-830;

(v) Neglect of a minor child that results in serious bodily injury as defined in section 28-109, requires hospitalization of the child, or results in an injury to the child that requires ongoing medical care, behavioral health care, or physical or occupational therapy, including a growth delay, which may be referred to as failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(vi) Physical abuse to the head or torso of a child or physical abuse that results in bodily injury;

(vii) An allegation that requires a forensic interview at a child advocacy center or coordination with the child abuse and neglect investigation team pursuant to section 28-728;

(viii) Out-of-home child abuse or neglect;

(ix) An allegation being investigated by a law enforcement agency at the time of the assignment;

(x) A history of termination of parental rights;

(xi) Absence of a caretaker without having given an alternate caregiver authority to make decisions and grant consents for necessary care, treatment, and education of a child or without having made provision to be contacted to make such decisions or grant such consents;

(xii) Domestic violence involving a caretaker in situations in which the alleged perpetrator has access to the child or caretaker;

(xiii) A household member illegally manufactures methamphetamine or opioids;

(xiv) A child has had contact with methamphetamine or other nonprescribed opioids, including a positive drug screening or test; or

(xv) For a report involving an infant, a household member tests positive for methamphetamine or nonprescribed opioids at the birth of such infant.

(c) The department may adopt and promulgate rules and regulations to (i) provide additional ineligibility criteria for assignment to alternative response and (ii) establish additional criteria requiring review by the Review, Evaluate, and Decide Team.

(d) A report that includes any of the following may be eligible for alternative response but shall first be reviewed by the Review, Evaluate, and Decide Team prior to assignment to alternative response:

(i) Domestic assault as defined in section 28-323 or domestic violence in the family home;

(ii) Use of alcohol or controlled substances as defined in section 28-401 or 28-405 by a caregiver that impairs the caregiver's ability to care and provide safety for the child; or

(iii) A family member residing in the home or a caregiver that has been the subject of a report accepted for traditional response or assigned to alternative response in the past six months.

(2) The Review, Evaluate, and Decide Team shall convene to review reports 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 report 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 report 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 or if the concern for the safety of the child is due to a temporary living arrangement. 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 or 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 data regarding 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. Other than the office of Inspector General of Nebraska Child Welfare, the Public Counsel, law enforcement agency personnel, child advocacy center employees, and county attorneys, no other agency or individual 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; Laws 2020, LB1061, § 4.
Effective date November 14, 2020.

28-713 Reports of child abuse or neglect; law enforcement agency; department; duties; rules and regulations.

(1) Unless a report is assigned to alternative response, upon the receipt of a call reporting child abuse and neglect as required by section 28-711, it is the duty of the law enforcement agency to investigate the report, to take immediate steps to protect the child, and to institute legal proceedings consistent with section 43-247 if the child is seriously endangered in the child's surroundings and immediate removal is necessary for the protection of the child. The law enforcement agency may request assistance from the department during the investigation and shall, by the next working day, notify either the hotline established under section 28-711 or the department of receipt of the report, including whether or not an investigation is being undertaken by the law enforcement agency. A copy of all reports, whether or not an investigation is being undertaken, shall be provided to the department.

(2)(a) When a report is assigned for traditional response, the department shall utilize an evidence-informed and validated tool to assess the safety of the child at the time of the assessment, the risk of future child abuse or neglect, the need for services to protect and assist the child and to preserve the family, and whether the case shall be entered into the central registry pursuant to section 28-720. As part of such investigation, the department may request assistance from the appropriate law enforcement agency or refer the matter to the county attorney to initiate legal proceedings.

(b) If in the course of an investigation the department finds a child is seriously endangered in the child's surroundings and immediate removal is necessary for the protection of the child, the department shall make an

immediate request for the county attorney to institute legal proceedings consistent with section 43-247.

(3) When a report contains an allegation of out-of-home child abuse or neglect, a law enforcement agency or the department shall immediately notify each person having custody of each child who has allegedly been abused or neglected that such report has been made unless the person to be notified is the subject of such report. The department or the law enforcement agency shall provide such person with information about the nature of the alleged child abuse or neglect and any other necessary information. The department shall also provide such social services as are necessary and appropriate under the circumstances to protect and assist the child and to preserve the family.

(4) In situations of alleged out-of-home child abuse or neglect, if the subject of the report of child abuse or neglect is a school employee and the child is a student in the school to which such school employee is assigned for work, the department shall immediately notify the Commissioner of Education of receipt of the report, including whether or not an investigation is being undertaken by the law enforcement agency or the department.

(5) The department shall, by the next working day after receiving a report of child abuse or neglect under this section, make a written report or a summary on forms provided by the department to the proper law enforcement agency in the county and enter in the tracking system of child protection cases maintained pursuant to section 28-715 all reports of child abuse or neglect opened for investigation and any action taken.

(6) The department shall, upon request, make available to the appropriate investigating law enforcement agency and the county attorney a copy of all reports relative to a case of suspected child abuse or neglect.

(7)(a) In addition to the responsibilities under subsections (1) through (6) of this section, upon the receipt of any report that a child is a reported or suspected victim of sex trafficking of a minor or labor trafficking of a minor as defined in section 28-830 and without regard to the subject of the report, the department shall:

(i) Assign the case to staff for an in-person investigation. The department shall assign a report for investigation regardless of whether or not the subject of the report is a member of the child's household or family or whether the subject is known or unknown, including cases of out-of-home child abuse and neglect;

(ii) Conduct an in-person investigation and appropriately coordinate with law enforcement agencies, the local child advocacy center, and the child abuse and neglect investigation team under section 28-729;

(iii) Use specialized screening and assessment instruments to identify whether the child is a victim of sex trafficking of a minor or labor trafficking of a minor or at high risk of becoming such a victim and determine the needs of the child and family to prevent or respond to abuse, neglect, and exploitation. On or before December 1, 2019, the department shall develop and adopt these instruments in consultation with knowledgeable organizations and individuals, including representatives of child advocacy centers, behavioral health providers, child welfare and juvenile justice service providers, law enforcement representatives, and prosecutors; and

(iv) Provide for or refer and connect the child and family to services deemed appropriate by the department in the least restrictive environment, or provide

for safe and appropriate placement, medical services, mental health care, or other needs as determined by the department based upon the department's assessment of the safety, risk, and needs of the child and family to respond to or prevent abuse, neglect, and exploitation.

(b) On or before July 1, 2020, the department shall adopt rules and regulations on the process of investigation, screening, and assessment of reports of child abuse or neglect and the criteria for opening an ongoing case upon allegations of sex trafficking of a minor or labor trafficking of a minor.

(8) When a preponderance of the evidence indicates that a child is a victim of abuse or neglect as a result of being a trafficking victim as defined in section 28-830, the department shall identify the child as a victim of trafficking, regardless of whether the subject of the report is a member of the child's household or family or whether the subject is known or unknown. The child shall be included in the department's data and reporting on the numbers of child victims of abuse, neglect, and trafficking.

Source: Laws 1977, LB 38, § 152; Laws 1979, LB 505, § 4; Laws 1982, LB 522, § 5; Laws 1988, LB 463, § 45; Laws 1992, LB 1184, § 10; Laws 1996, LB 1044, § 72; Laws 1997, LB 119, § 2; Laws 1997, LB 307, § 13; Laws 2005, LB 116, § 3; Laws 2007, LB296, § 37; Laws 2014, LB853, § 5; Laws 2019, LB519, § 11; Laws 2020, LB881, § 10; Laws 2020, LB1061, § 5.
Effective date November 14, 2020.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB881, section 10, with LB1061, section 5, to reflect all amendments.

28-713.01 Cases of child abuse or neglect; completion of investigation; notice; when; right to amend or expunge information.

(1) Upon completion of the investigation pursuant to section 28-713:

(a) In situations of alleged out-of-home child abuse or neglect, the person or persons having custody of the allegedly abused or neglected child or children shall be given written notice of the results of the investigation and any other information the law enforcement agency or department deems necessary. Such notice and information shall be sent by first-class mail;

(b) The subject of the report of child abuse or neglect shall be given written notice of the determination of the case and whether the subject of the report of child abuse or neglect will be entered into the central registry of child protection cases maintained pursuant to section 28-718 under the criteria provided in section 28-720; and

(c) If the subject of the report of child abuse or neglect is a school employee and the child is a student in the school to which such school employee is assigned for work, the notice described in subdivision (1)(b) of this section shall also be sent to the Commissioner of Education.

(2) If the subject of the report will be entered into the central registry, the notice to the subject shall be sent by certified mail with return receipt requested or first-class mail to the last-known address of the subject of the report of child abuse or neglect and shall include:

(a) The nature of the report;

(b) The classification of the report under section 28-720;

(c) Notification of the right of the subject of the report of child abuse or neglect to request the department to amend or expunge identifying information from the report or to remove the substantiated report from the central registry in accordance with section 28-723; and

(d) If the subject of the report of child abuse or neglect is a minor child who is twelve years of age or older but younger than nineteen years of age:

(i) Notification of the mandatory expungement hearing to be held according to section 28-721, a waiver form to waive the hearing, and an explanation of the hearing process;

(ii) An explanation of the implications of being entered in the central registry as a subject;

(iii) Notification of any other procedures determined appropriate in rules and regulations adopted and promulgated by the department; and

(iv) Provision of a copy of all notice materials required to be provided to the subject under this subsection to the minor child's attorney of record, parent or guardian, and guardian ad litem, if applicable.

(3) If the subject of the report will not be entered into the central registry, the notice to the subject shall be sent by first-class mail and shall include:

(a) The nature of the report; and

(b) The classification of the report under section 28-720.

Source: Laws 1994, LB 1035, § 3; Laws 1997, LB 119, § 3; Laws 2005, LB 116, § 4; Laws 2012, LB1051, § 17; Laws 2014, LB853, § 6; Laws 2015, LB292, § 1; Laws 2020, LB881, § 11.
Effective date November 14, 2020.

28-713.02 Non-court-involved cases; right of parent; caregiver authority; department; powers and duties.

(1) In all non-court-involved cases in which a child lives temporarily with a kin caregiver or a relative caregiver until reunification can be safely achieved:

(a) A parent shall have the right to have his or her child returned to such parent's home upon demand unless the child is seriously endangered by the child's surroundings and removal is necessary for the child's protection; and

(b) The kin caregiver or the relative caregiver shall have temporary parental authority to exercise powers regarding the care, custody, and property of the child except (i) the power to consent to marriage and adoption of the child and (ii) for other limitations placed on the delegation of parental authority to the kin caregiver or the relative caregiver by the parent.

(2) If a child is seriously endangered and removal is necessary, the department shall inform the parent that he or she may be referred for a court-involved case or for a petition to be filed pursuant to subdivision (3)(a) of section 43-247.

(3) The department may reimburse a kin caregiver or a relative caregiver for facilitating services for the child and shall notify such caregiver if such caregiver is eligible for the child-only Temporary Assistance for Needy Families program established in 42 U.S.C. 601 et seq., and any other public benefit for which such caregiver may be eligible, and shall assist such caregiver in applying for such program or benefit.

(4) In all non-court-involved cases, the department shall provide a written notice of rights to any parent, and, if applicable, to any kin caregiver or relative

caregiver, that complies with due process and includes notice (a) of the specific factual basis of the department's involvement, (b) of the possibility that a petition under section 43-247 could be filed in the future if it is determined that the safety of the child is not or cannot be assured, and (c) that the participation of the parent, kin caregiver, or relative caregiver in receiving prevention services could be relevant evidence presented in any future proceedings.

(5) Nothing in this section shall be construed to affect the otherwise existing rights of a child or parent who is involved in a non-court-involved case.

Source: Laws 2020, LB1061, § 6.

Effective date November 14, 2020.

28-713.03 Rules and regulations.

(1) The department shall adopt and promulgate rules and regulations consistent with Laws 2020, LB1061, and shall revoke any rules and regulations inconsistent with Laws 2020, LB1061, by July 1, 2021.

(2) The department shall adopt and promulgate rules and regulations regarding (a) the maximum time allowed between receiving a report of child abuse or neglect and an assigned caseworker making contact with the affected family, (b) the maximum amount of time between receipt of a report and the completion of an assessment or investigation, (c) the transfer of cases from alternative response to traditional response, (d) the criteria and process to be used by the Review, Evaluate, and Decide Team, and (e) the process used to accept and categorize reports, including the operation of the hotline established under section 28-711.

(3) The department shall adopt and promulgate rules and regulations describing the process for non-court-involved cases, the right of any child, parent, kin caregiver, or relative caregiver to an administrative appeal of any department action or inaction in a non-court-involved case, and the process for finding that a child is seriously endangered.

Source: Laws 2020, LB1061, § 7.

Effective date November 14, 2020.

28-716 Person participating in an investigation or the making of a report or providing information or assistance; immune from liability; civil or criminal.

Any person participating in an investigation or the making of a report of child abuse or neglect required by section 28-711 pursuant to or participating in a judicial proceeding resulting therefrom or providing information or assistance, including a medical evaluation or consultation in connection with an investigation, a report, or a judicial proceeding pursuant to a report of child abuse or neglect, shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed, except for maliciously false statements.

Source: Laws 1977, LB 38, § 155; Laws 1994, LB 1035, § 5; Laws 2005, LB 116, § 7; Laws 2020, LB1148, § 3.

Effective date November 14, 2020.

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.

28-719 Child abuse and neglect records; access; when.

Upon complying with identification requirements established by regulation of the department, or when ordered by a court of competent jurisdiction, any person legally authorized by section 28-722, 28-726, or 28-727 to have access to records relating to child abuse and neglect may request and shall be immediately provided the information requested in accordance with the requirements of the Child Protection and Family Safety Act. Except for such information provided to department personnel and county attorneys, such information shall not include the name and address of the person making the report of child abuse or neglect. The names and other identifying data and the dates and the circumstances of any persons requesting or receiving information from the central registry of child protection cases maintained pursuant to section 28-718 shall be entered in the central registry record.

Source: Laws 1979, LB 505, § 7; Laws 2005, LB 116, § 10; Laws 2014, LB853, § 8; Laws 2020, LB1148, § 4.
Effective date November 14, 2020.

28-726 Information; access.

Except as provided in this section and sections 28-722 and 81-3126, no person, official, or agency shall have access to information in the tracking system of child protection cases maintained pursuant to section 28-715 or in records in the central registry of child protection cases maintained pursuant to section 28-718 unless in furtherance of purposes directly connected with the administration of the Child Protection and Family Safety Act. Such persons, officials, and agencies having access to such information shall include, but not be limited to:

(1) A law enforcement agency investigating a report of known or suspected child abuse or neglect;

(2) A county attorney in preparation of a child abuse or neglect petition or termination of parental rights petition;

(3) A physician who has before him or her a child whom he or she reasonably suspects may be abused or neglected;

(4) An agency having the legal responsibility or authorization to care for, treat, or supervise an abused or neglected child or a parent, a guardian, or other person responsible for the abused or neglected child's welfare who is the subject of the report of child abuse or neglect;

(5) Any person engaged in bona fide research or auditing. No information identifying the subjects of the report of child abuse or neglect shall be made available to the researcher or auditor;

(6) The Foster Care Review Office and the designated local foster care review board when the information relates to a child in a foster care placement as defined in section 43-1301. The information provided to the office and local board shall not include the name or identity of any person making a report of suspected child abuse or neglect;

(7) The designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001, as the act existed on January 1, 2005, and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801, as the act existed on September 1, 2001, acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness;

(8) The person or persons having custody of the abused or neglected child in situations of alleged out-of-home child abuse or neglect;

(9) The department, as required or authorized by state law, federal law, federal regulation, or applicable federal program provisions and in furtherance of its programs;

(10) A probation officer administering juvenile intake services pursuant to section 29-2260.01, conducting court-ordered predispositional investigations prior to disposition, or supervising a juvenile upon disposition; and

(11) A child advocacy center pursuant to team protocols and in connection with a specific case under review or investigation by a child abuse and neglect investigation team or a child abuse and neglect treatment team convened by a county attorney.

Source: Laws 1979, LB 505, § 14; Laws 1982, LB 522, § 9; Laws 1988, LB 463, § 47; Laws 1990, LB 1222, § 1; Laws 1992, LB 643, § 2; Laws 1994, LB 1035, § 7; Laws 1997, LB 119, § 4; Laws 2001, LB 214, § 2; Laws 2002, LB 642, § 8; Laws 2005, LB 116, § 18; Laws 2007, LB296, § 39; Laws 2008, LB782, § 3; Laws 2012, LB998, § 1; Laws 2013, LB561, § 1; Laws 2014, LB853, § 16; Laws 2020, LB1148, § 5.

Effective date November 14, 2020.

28-728 Legislative findings and intent; child abuse and neglect investigation team; child advocacy center; child abuse and neglect treatment team; powers and duties.

(1) The Legislature finds that child abuse and neglect are community problems requiring a coordinated response by law enforcement, child advocacy centers, prosecutors, the Department of Health and Human Services, and other

agencies or entities designed to protect children. It is the intent of the Legislature to create a child abuse and neglect investigation team in each county or contiguous group of counties and to create a child abuse and neglect treatment team in each county or contiguous group of counties.

(2) Each county or contiguous group of counties will be assigned by the Department of Health and Human Services to a child advocacy center. The purpose of a child advocacy center is to provide a child-focused location for conducting forensic interviews and medical evaluations for alleged child victims of abuse and neglect and for coordinating a multidisciplinary team response that supports the physical, emotional, and psychological needs of children who are alleged victims of abuse or neglect. Each child advocacy center shall meet accreditation criteria set forth by the National Children's Alliance. Nothing in this section shall prevent a child from receiving treatment or other services at a child advocacy center which has received or is in the process of receiving accreditation.

(3) Each county attorney or the county attorney representing a contiguous group of counties is responsible for convening the child abuse and neglect investigation team and ensuring that protocols are established and implemented. A representative of the child advocacy center assigned to the team shall assist the county attorney in facilitating case review, developing and updating protocols, and arranging training opportunities for the team. Each team must have protocols which, at a minimum, shall include procedures for:

(a) Mandatory reporting of child abuse and neglect as outlined in section 28-711 to include training to professionals on identification and reporting of abuse;

(b) Assigning roles and responsibilities between law enforcement and the Department of Health and Human Services for the initial response;

(c) Outlining how reports will be shared between law enforcement and the Department of Health and Human Services under sections 28-712.01 and 28-713;

(d) Coordinating the investigative response including, but not limited to:

(i) Defining cases that require a priority response;

(ii) Contacting the reporting party;

(iii) Arranging for a video-recorded forensic interview at a child advocacy center for children who are three to eighteen years of age and are alleged to be victims of sexual abuse or serious physical abuse or neglect, have witnessed a violent crime, are found in a drug-endangered environment, or have been recovered from a kidnapping;

(iv) Assessing the need for and arranging, when indicated, a medical evaluation of the alleged child victim;

(v) Assessing the need for and arranging, when indicated, appropriate mental health services for the alleged child victim or nonoffender caregiver;

(vi) Conducting collateral interviews with other persons with information pertinent to the investigation including other potential victims;

(vii) Collecting, processing, and preserving physical evidence including photographing the crime scene as well as any physical injuries as a result of the alleged child abuse and neglect; and

(viii) Interviewing the alleged perpetrator;

- (e) Reducing the risk of harm to alleged child abuse and neglect victims;
- (f) Ensuring that the child is in safe surroundings, including removing the perpetrator when necessary or arranging for temporary custody of the child when the child is seriously endangered in his or her surroundings and immediate removal appears to be necessary for the child's protection as provided in section 43-248;
- (g) Sharing of case information between team members; and
- (h) Outlining what cases will be reviewed by the investigation team including, but not limited to:
 - (i) Cases of sexual abuse, serious physical abuse and neglect, drug-endangered children, and serious or ongoing domestic violence;
 - (ii) Cases determined by the Department of Health and Human Services to be high or very high risk for further maltreatment; and
 - (iii) Any other case referred by a member of the team when a system-response issue has been identified.
- (4) Each county attorney or the county attorney representing a contiguous group of counties is responsible for convening the child abuse and neglect treatment team and ensuring that protocols are established and implemented. A representative of the child advocacy center appointed to the team shall assist the county attorney in facilitating case review, developing and updating protocols, and arranging training opportunities for the team. Each team must have protocols which, at a minimum, shall include procedures for:
 - (a) Case coordination and assistance, including the location of services available within the area;
 - (b) Case staffings and the coordination, development, implementation, and monitoring of treatment or safety plans particularly in those cases in which ongoing services are provided by the Department of Health and Human Services or a contracted agency but the juvenile court is not involved;
 - (c) Reducing the risk of harm to child abuse and neglect victims;
 - (d) Assisting those child abuse and neglect victims who are abused and neglected by perpetrators who do not reside in their homes; and
 - (e) Working with multiproblem status offenders and delinquent youth.
- (5) For purposes of sections 28-728 to 28-730, forensic interview means a video-recorded interview of an alleged child victim conducted at a child advocacy center by a professional with specialized training designed to elicit details about alleged incidents of abuse or neglect, and such interview may result in intervention in criminal or juvenile court.

Source: Laws 1992, LB 1184, § 1; Laws 1996, LB 1044, § 73; Laws 1999, LB 594, § 6; Laws 2006, LB 1113, § 24; Laws 2007, LB296, § 40; Laws 2012, LB993, § 1; Laws 2014, LB853, § 17; Laws 2020, LB1148, § 6.

Effective date November 14, 2020.

28-730 Records and information; access; disclosure; limitation; review of cases; immunity; violation; penalty; video recording of forensic interviews; maintain; release or use; prohibited; exceptions.

- (1) Notwithstanding any other provision of law regarding the confidentiality of records and when not prohibited by the federal Privacy Act of 1974, as

amended, juvenile court records and any other pertinent information that may be in the possession of school districts, law enforcement agencies, county attorneys, the Attorney General, the Department of Health and Human Services, child advocacy centers, and other team members concerning a child whose case is being investigated or discussed by a child abuse and neglect investigation team or a child abuse and neglect treatment team shall be shared with the respective team members as part of the discussion and coordination of efforts for investigative or treatment purposes. Upon request by a team, any individual or agency with information or records concerning a particular child shall share all relevant information or records with the team as determined by the team pursuant to the appropriate team protocol. Only a team which has accepted the child's case for investigation or treatment shall be entitled to access to such information.

(2) All information acquired by a team member or other individuals pursuant to protocols developed by the team shall be confidential and shall not be disclosed except to the extent necessary to perform case consultations, to carry out a treatment plan or recommendations, or for use in a legal proceeding instituted by a county attorney or the Child Protection Division of the office of the Attorney General. Information, documents, or records otherwise available from the original sources shall not be immune from discovery or use in any civil or criminal action merely because the information, documents, or records were presented during a case consultation if the testimony sought is otherwise permissible and discoverable. Any person who presented information before the team or who is a team member shall not be prevented from testifying as to matters within the person's knowledge.

(3) Each team may review any case arising under the Nebraska Criminal Code when a child is a victim or any case arising under the Nebraska Juvenile Code. A member of a team who participates in good faith in team discussion or any person who in good faith cooperates with a team by providing information or records about a child whose case has been accepted for investigation or treatment by a team shall be immune from any civil or criminal liability. The provisions of this subsection or any other section granting or allowing the grant of immunity from liability shall not be extended to any person alleged to have committed an act of child abuse or neglect.

(4) A member of a team who publicly discloses information regarding a case consultation in a manner not consistent with sections 28-728 to 28-730 shall be guilty of a Class III misdemeanor.

(5) A child advocacy center shall maintain the video recording of all forensic interviews conducted at that child advocacy center. Such maintenance shall be in accordance with child abuse and neglect investigation team protocols established pursuant to section 28-728. The recording may be maintained digitally if adequate security measures are in place to ensure no unauthorized access.

(6) Information obtained through forensic interviews may be shared with members of child abuse and neglect investigation teams and child abuse and neglect treatment teams.

(7) A custodian of a video recording of a forensic interview shall not release or use the video recording or copies of such recording or consent, by commission or omission, to the release or use of the video recording or copies to or by any other party without a court order, notwithstanding any consent or release by the child victim or child witness, except that:

(a) The child advocacy center where a forensic interview is conducted may use the video recording for purposes of supervision and peer review required to meet national accreditation standards;

(b) Any custodian shall release or consent to the release or use of the video recording upon request to law enforcement agencies authorized to investigate, or agencies authorized to prosecute, any juvenile or criminal conduct described in the forensic interview;

(c) Any custodian shall release or consent to the release or use of the video recording upon request pursuant to a request under the Office of Inspector General of Nebraska Child Welfare Act;

(d) Any custodian shall provide secure access to view a video recording of a forensic interview upon request by a representative of the Department of Health and Human Services for purposes of classifying cases of child abuse and neglect pursuant to section 28-720 or determining the risk of harm to the child and needed social services of the family pursuant to section 28-713. Such representative shall be subject to the same release and use restrictions as any custodian under this subsection; and

(e) Any custodian shall release or consent to the release or use of the video recording pursuant to a court order issued under section 29-1912 or 29-1926.

Source: Laws 1992, LB 1184, § 3; Laws 1996, LB 1044, § 75; Laws 2006, LB 1113, § 26; Laws 2020, LB1148, § 7.
Effective date November 14, 2020.

Cross References

Nebraska Juvenile Code, see section 43-2,129.
Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.

ARTICLE 8

OFFENSES RELATING TO MORALS

Section	
28-802.	Pandering; penalty.
28-806.	Public indecency; penalty.
28-813.01.	Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense; forfeiture of property.
28-814.	Criminal prosecutions; trial by jury; waiver; instructions to jury; expert witness.
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.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-806 Public indecency; penalty.

(1) A person, eighteen years of age or over, commits public indecency if such person performs or procures, or assists any other person to perform, in a public place and where the conduct may reasonably be expected to be viewed by members of the public:

(a) An act of sexual penetration; or

(b) An exposure of the genitals of the body done with intent to affront or alarm any person; or

(c) A lewd fondling or caressing of the body of another person of the same or opposite sex.

(2) Public indecency is a Class II misdemeanor.

(3) It shall not be a violation of this section for an individual to breast-feed a child in a public place.

Source: Laws 1977, LB 38, § 162; Laws 2019, LB209, § 4.

28-813.01 Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense; forfeiture of property.

(1) It shall be unlawful for a person nineteen years of age or older to knowingly possess any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers. Violation of this subsection is a Class IIA felony.

(2) It shall be unlawful for a person under nineteen years of age to knowingly and intentionally possess any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers. Violation of this subsection is a Class I misdemeanor. A second or subsequent conviction under this subsection is a Class IV felony.

(3) It shall be an affirmative defense to a charge made pursuant to subsection (2) of this section that:

(a)(i) The defendant was less than nineteen years of age; (ii) the visual depiction of sexually explicit conduct portrays a child who is fifteen years of age or older; (iii) the visual depiction was knowingly and voluntarily generated by the child depicted therein; (iv) the visual depiction was knowingly and voluntarily provided by the child depicted in the visual depiction; (v) the visual depiction contains only one child; (vi) the defendant has not provided or made available the visual depiction to another person except the child depicted who originally sent the visual depiction to the defendant; and (vii) the defendant did not coerce the child in the visual depiction to either create or send the visual depiction; or

(b)(i) The defendant was less than eighteen years of age; (ii) the difference in age between the defendant and the child portrayed is less than four years; (iii) the visual depiction was knowingly and voluntarily generated by the child depicted therein; (iv) the visual depiction was knowingly and voluntarily provided by the child depicted in the visual depiction; (v) the visual depiction contains only one child; (vi) the defendant has not provided or made available the visual depiction to another person except the child depicted who originally sent the visual depiction to the defendant; and (vii) the defendant did not coerce the child in the visual depiction to either create or send the visual depiction.

(4) Any person who violates subsection (1) or (2) of this section and has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-833, 28-1463.03, or 28-1463.05 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.

(5) In addition to the penalties provided in 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, 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 this section.

(6) The definitions in section 28-1463.02 shall apply to this section.

Source: Laws 1988, LB 117, § 6; Laws 2003, LB 111, § 1; Laws 2009, LB97, § 15; Laws 2015, LB605, § 45; Laws 2016, LB1106, § 7; Laws 2019, LB630, § 3.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-814 Criminal prosecutions; trial by jury; waiver; instructions to jury; expert witness.

(1) Criminal prosecutions involving the ultimate issue of obscenity, as distinguished from the issue of probable cause, shall be tried by jury, unless the defendant shall waive a jury trial in writing or by statement in open court entered on the record.

(2) The judge shall instruct the jury that the guidelines in determining whether a work, material, conduct, or live exhibition is obscene are: (a) The average person applying contemporary community standards would find the work taken as a whole goes substantially beyond contemporary limits of candor in description or presentation of such matters and predominantly appeals to the prurient, shameful, or morbid interest; (b) the work depicts in a patently offensive way sexual conduct specifically referred to in sections 28-807 to 28-829; (c) the work as a whole lacks serious literary, artistic, political, or scientific value; and (d) in applying these guidelines to the determination of whether or not the work, material, conduct, or live exhibition is obscene, each element of each guideline must be established beyond a reasonable doubt.

(3) In any proceeding, civil or criminal, under sections 28-807 to 28-829, where there is an issue as to whether or not the matter is obscene, either party

shall have the right to introduce, in addition to all other relevant evidence, the testimony of expert witnesses on such issue as to any artistic, literary, scientific, political, or other societal value in the determination of the issue of obscenity.

Source: Laws 1977, LB 38, § 170; Laws 2018, LB193, § 49.

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.

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.

ARTICLE 9

OFFENSES INVOLVING INTEGRITY AND EFFECTIVENESS
OF GOVERNMENT OPERATION

Section

- 28-902. Physical injury related to criminal offense; report by health care provider; sexual assault; duties of health care provider; law enforcement agency; duties; violation; penalty.
- 28-907. False reporting; penalty.
- 28-915. Perjury; subornation of perjury; penalty.
- 28-915.01. False statement under oath or affirmation; penalty; applicability of section.
- 28-916. Terms, defined.
- 28-916.01. Terms, defined.
- 28-919. Tampering with witness or informant; jury tampering; penalty.
- 28-922. Tampering with physical evidence; penalty; physical evidence, defined.
- 28-929. Assault on an officer, an emergency responder, certain employees, or a health care professional in the first degree; penalty.
- 28-929.01. Assault on an emergency care provider or a health care professional; terms, defined.
- 28-929.02. Assault on a health care professional; hospital and health clinic; sign required.
- 28-930. Assault on an officer, an emergency responder, certain employees, or a health care professional in the second degree; penalty.
- 28-931. Assault on an officer, an emergency responder, certain employees, or a health care professional in the third degree; penalty.
- 28-931.01. Assault on an officer, an emergency responder, certain employees, or a health care professional using a motor vehicle; penalty.
- 28-934. Assault with a bodily fluid against a public safety officer; penalty; order to collect evidence.
- 28-936. Electronic communication device; possession within facility; provided to inmate; penalty; seizure; disposition.

28-902 Physical injury related to criminal offense; report by health care provider; sexual assault; duties of health care provider; law enforcement agency; duties; violation; penalty.

(1) Except as provided in subsection (2) of this section, every health care provider shall immediately report to law enforcement every case in which the health care provider is consulted for medical care for physical injury which appears to have been received in connection with, or as a result of, the commission of a criminal offense. Such report shall include the name of the victim, a brief description of the victim's physical injury, and, if ascertainable, the victim's residential address and the location of the offense. Any other law or rule of evidence relative to confidential communications is suspended insofar as compliance with this section is concerned.

(2) When a health care provider is consulted for medical care for physical injury which reasonably appears to have been received in connection with, or as a result of, the commission of an actual or attempted sexual assault and the victim was eighteen years of age or older at the time of such actual or attempted sexual assault, the health care provider shall:

(a) Provide the victim with information detailing the reporting options available under subdivision (2)(b) of this section;

(b) Ask the victim either:

(i) To provide written consent to report such actual or attempted sexual assault as provided in subsection (1) of this section. If the victim provides such written consent, the health care provider shall make the report required by

subsection (1) of this section and submit to law enforcement a sexual assault evidence collection kit if one has been obtained; or

(ii) To sign a written acknowledgment that such actual or attempted sexual assault will not be reported except as provided in subdivision (2)(c) or subsection (3) of this section, but that the health care provider will submit to law enforcement a sexual assault evidence collection kit, if one has been obtained, using an anonymous reporting protocol. A health care provider may use the anonymous reporting protocol developed by the Attorney General under section 84-218 or may use a different anonymous reporting protocol;

(c) Regardless of the victim's decision under subdivision (2)(b) of this section, if the victim is suffering from a serious bodily injury, or any bodily injury where a deadly weapon was used to inflict such injury, which appears to have been received in connection with, or as a result of, the commission of an actual or attempted sexual assault, the health care provider shall report such injury to law enforcement as provided in subsection (1) of this section; and

(d) Unless declined by the victim, refer him or her to an advocate.

(3) When a health care provider is consulted for medical care for physical injury which reasonably appears to have been received in connection with, or as a result of, the commission of an actual or attempted sexual assault, the health care provider shall, regardless of the victim's age or the victim's decision under subdivision (2)(b) of this section, provide law enforcement with a sexual assault evidence collection kit if one has been obtained.

(4) A law enforcement agency receiving a sexual assault evidence collection kit under this section shall preserve such kit for twenty years after the date of receipt or as otherwise ordered by a court.

(5) Any health care provider who knowingly fails to make any report required by subsection (1) of this section is guilty of a Class III misdemeanor. If multiple health care providers are involved in the consultation of a person in a given occurrence, this section does not require each health care provider to make a separate report, so long as one of such health care providers makes the report required by this section.

(6) For purposes of this section:

(a) Advocate has the same meaning as in section 29-4302;

(b) Anonymous reporting protocol means a reporting protocol that allows the identity of the victim, his or her personal or identifying information, and the details of the sexual assault or attempted sexual assault to remain confidential and undisclosed by the health care provider, other than submission to law enforcement of any sexual assault evidence collection kit, unless and until the victim consents to the release of such information;

(c) Health care provider means any of the following individuals who are licensed, certified, or registered to perform specified health services consistent with state law: A physician, physician assistant, nurse, or advanced practice registered nurse;

(d) Law enforcement means a law enforcement agency in the county in which the consultation occurred; and

(e) Victim means the person seeking medical care.

Source: Laws 1977, LB 38, § 187; Laws 2018, LB1132, § 1.

28-907 False reporting; penalty.

(1) A person commits the offense of false reporting if he or she:

(a) Furnishes material information he or she knows to be false to any peace officer or other official with the intent to instigate an investigation of an alleged criminal matter or to impede the investigation of an actual criminal matter;

(b) Furnishes information he or she knows to be false alleging the existence of the need for the assistance of an emergency medical service or emergency care provider or an emergency in which human life or property are in jeopardy to any hospital, emergency medical service, or other person or governmental agency;

(c) Furnishes any information, or causes such information to be furnished or conveyed by electric, electronic, telephonic, or mechanical means, knowing the same to be false concerning the need for assistance of a fire department or any personnel or equipment of such department;

(d) Furnishes any information he or she knows to be false concerning the location of any explosive in any building or other property to any person; or

(e) Furnishes material information he or she knows to be false to any governmental department or agency with the intent to instigate an investigation or to impede an ongoing investigation and which actually results in causing or impeding such investigation.

(2)(a) False reporting pursuant to subdivisions (1)(a) through (d) of this section is a Class I misdemeanor.

(b) False reporting pursuant to subdivision (1)(e) of this section is an infraction.

Source: Laws 1977, LB 38, § 192; Laws 1982, LB 347, § 12; Laws 1994, LB 907, § 1; Laws 1997, LB 138, § 36; Laws 2020, LB1002, § 4.
Operative date November 14, 2020.

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.

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.

Cross References

Nebraska Political Accountability and Disclosure Act, see section 49-1401.

Uniform Unsworn Foreign Declarations Act, see section 49-1801.

28-916 Terms, defined.

As used in sections 28-916 to 28-923, unless the context otherwise requires:

(1) Juror means any person who is a member of any petit jury or grand jury, impaneled by any court of this state or by any public servant authorized by law to impanel a jury. The word juror also includes any person who has been drawn or summoned to attend as a potential juror;

(2) Testimony means oral or written statements, documents, or any other evidence that may be offered by or through a witness in an official proceeding; and

(3) Official proceeding means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with any such proceeding.

Source: Laws 1977, LB 38, § 201; Laws 2020, LB387, § 40.
Operative date January 1, 2021.

28-916.01 Terms, defined.

As used in this section and sections 28-915, 28-915.01, 28-919, and 28-922, unless the context otherwise requires:

(1) Administrative proceeding shall mean any proceeding, other than a judicial proceeding, the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals;

(2) Benefit shall mean gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he or she is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose;

(3) Government shall include any branch, subdivision, or agency of the government of the state or any locality within it;

(4) Harm shall mean loss, disadvantage, or injury, or anything so regarded by the person affected, including loss, disadvantage, or injury to any other person or entity in whose welfare he or she is interested;

(5) Pecuniary benefit shall mean benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain;

(6) Public servant shall mean any officer or employee of government, including legislators and judges, and any person participating as juror, advisor, consultant, or otherwise, in performing a governmental function, but the term shall not include witnesses;

(7) Official proceeding shall mean a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing

examiner, commissioner, notary, or other person taking testimony or deposition in connection with any such proceeding; and

(8) Statement shall mean any representation, but shall include a representation of opinion, belief, or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

Source: Laws 1987, LB 451, § 2; Laws 2019, LB496, § 1.

28-919 Tampering with witness or informant; jury tampering; penalty.

(1) A person commits the offense of tampering with a witness or informant if, believing that an official proceeding or investigation of a criminal or civil matter is pending or about to be instituted, he or she attempts to induce or otherwise cause a witness or informant to:

- (a) Testify or inform falsely;
- (b) Withhold any testimony, information, document, or thing;
- (c) Elude legal process summoning him or her to testify or supply evidence;

or

(d) Absent himself or herself from any proceeding or investigation to which he or she has been legally summoned.

(2) A person commits the offense of jury tampering if, with intent to influence a juror's vote, opinion, decision, or other action in a case, he or she attempts directly or indirectly to communicate with a juror other than as a part of the proceedings in the trial of the case.

(3) Tampering with witnesses or informants is a Class IV felony, except that if such offense involves a pending criminal proceeding which alleges a violation of another offense classified:

(a) As a Class II misdemeanor or a lower classification or a violation of a city or village ordinance, the offense is a Class I misdemeanor; or

(b) As a Class II felony or a higher classification, the offense is a Class II felony.

(4) Jury tampering is a Class IV felony, except that if such offense involves a pending criminal proceeding which alleges a violation of another offense classified as a Class II felony or a higher classification, the offense is a Class II felony.

Source: Laws 1977, LB 38, § 204; Laws 1994, LB 906, § 1; Laws 2019, LB496, § 2.

28-922 Tampering with physical evidence; penalty; physical evidence, defined.

(1) A person commits the offense of tampering with physical evidence if, believing that an official proceeding is pending or about to be instituted and acting without legal right or authority, he or she:

(a) Destroys, mutilates, conceals, removes, or alters physical evidence with the intent to impair its verity or availability in the pending or prospective official proceeding; or

(b) Knowingly makes, presents, or offers any false physical evidence with intent that it be introduced in the pending or prospective official proceeding.

(2) Physical evidence, as used in this section, shall mean any article, object, document, record, or other thing of physical substance.

(3) Tampering with physical evidence is a Class IV felony, except that if such offense involves a pending criminal proceeding which alleges a violation of another offense classified:

(a) As a Class II misdemeanor or a lower classification or a violation of a city or village ordinance, the offense is a Class I misdemeanor; or

(b) As a Class II felony or a higher classification, the offense is a Class II felony.

Source: Laws 1977, LB 38, § 207; Laws 2019, LB496, § 3.

28-929 Assault on an officer, an emergency responder, certain employees, or a health care professional in the first degree; penalty.

(1) A person commits the offense of assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree if:

(a) He or she intentionally or knowingly causes serious bodily injury:

(i) To a peace officer, a probation officer, a firefighter, an emergency care provider, or an employee of the Department of Correctional Services;

(ii) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or

(iii) To a health care professional; and

(b) The offense is committed while such officer, firefighter, emergency care provider, or employee is engaged in the performance of his or her official duties or while the health care professional is on duty at a hospital or a health clinic.

(2) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree shall be a Class ID felony.

Source: Laws 1982, LB 465, § 3; Laws 2005, LB 538, § 1; Laws 2009, LB63, § 7; Laws 2010, LB771, § 4; Laws 2012, LB677, § 1; Laws 2014, LB811, § 17; Laws 2020, LB1002, § 5.
Operative date November 14, 2020.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-929.01 Assault on an emergency care provider or a health care professional; terms, defined.

For purposes of sections 28-929, 28-929.02, 28-930, 28-931, and 28-931.01:

(1) Emergency care provider means (a) an emergency medical responder; (b) an emergency medical technician; (c) an advanced emergency medical technician; (d) a community paramedic; (e) a critical care paramedic; or (f) a paramedic, as those persons are licensed and classified under the Emergency Medical Services Practice Act;

(2) Health care professional means a physician or other health care practitioner who is licensed, certified, or registered to perform specified health services consistent with state law who practices at a hospital or a health clinic;

- (3) Health clinic has the definition found in section 71-416; and
- (4) Hospital has the definition found in section 71-419.

Source: Laws 2012, LB677, § 4; Laws 2014, LB811, § 18; Laws 2020, LB1002, § 6.

Operative date November 14, 2020.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.

28-929.02 Assault on a health care professional; hospital and health clinic; sign required.

Every hospital and health clinic shall display at all times in a prominent place a printed sign with a minimum height of twenty inches and a minimum width of fourteen inches, with each letter to be a minimum of one-fourth inch in height, which shall read as follows:

WARNING: ASSAULTING A HEALTH CARE PROFESSIONAL WHO IS ENGAGED IN THE PERFORMANCE OF HIS OR HER OFFICIAL DUTIES, INCLUDING STRIKING A HEALTH CARE PROFESSIONAL WITH ANY BODILY FLUID, IS A SERIOUS CRIME WHICH MAY BE PUNISHABLE AS A FELONY.

Source: Laws 2012, LB677, § 5; Laws 2018, LB913, § 1.

28-930 Assault on an officer, an emergency responder, certain employees, or a health care professional in the second degree; penalty.

(1) A person commits the offense of assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree if:

(a) He or she:

(i) Intentionally or knowingly causes bodily injury with a dangerous instrument:

(A) To a peace officer, a probation officer, a firefighter, an emergency care provider, or an employee of the Department of Correctional Services;

(B) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or

(C) To a health care professional; or

(ii) Recklessly causes bodily injury with a dangerous instrument:

(A) To a peace officer, a probation officer, a firefighter, an emergency care provider, or an employee of the Department of Correctional Services;

(B) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or

(C) To a health care professional; and

(b) The offense is committed while such officer, firefighter, emergency care provider, or employee is engaged in the performance of his or her official duties or while the health care professional is on duty at a hospital or a health clinic.

(2) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree shall be a Class II felony.

Source: Laws 1982, LB 465, § 4; Laws 2005, LB 538, § 2; Laws 2009, LB63, § 8; Laws 2010, LB771, § 5; Laws 2012, LB677, § 2; Laws 2014, LB811, § 19; Laws 2020, LB1002, § 7.
Operative date November 14, 2020.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-931 Assault on an officer, an emergency responder, certain employees, or a health care professional in the third degree; penalty.

(1) A person commits the offense of assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree if:

(a) He or she intentionally, knowingly, or recklessly causes bodily injury:

(i) To a peace officer, a probation officer, a firefighter, an emergency care provider, or an employee of the Department of Correctional Services;

(ii) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or

(iii) To a health care professional; and

(b) The offense is committed while such officer, firefighter, emergency care provider, or employee is engaged in the performance of his or her official duties or while the health care professional is on duty at a hospital or a health clinic.

(2) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree shall be a Class IIIA felony.

Source: Laws 1982, LB 465, § 5; Laws 1997, LB 364, § 11; Laws 2005, LB 538, § 3; Laws 2010, LB771, § 6; Laws 2012, LB677, § 3; Laws 2014, LB811, § 20; Laws 2020, LB1002, § 8.
Operative date November 14, 2020.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-931.01 Assault on an officer, an emergency responder, certain employees, or a health care professional using a motor vehicle; penalty.

(1) A person commits the offense of assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle if:

(a) By using a motor vehicle to run over or to strike an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional or by using a motor vehicle to collide with an officer's, an emergency responder's, a state correctional employee's, a Department of Health and Human Services employee's, or a health care professional's motor vehicle, he or she intentionally and knowingly causes bodily injury:

(i) To a peace officer, a probation officer, a firefighter, an emergency care provider, or an employee of the Department of Correctional Services;

(ii) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or

(iii) To a health care professional; and

(b) The offense is committed while such officer, firefighter, emergency care provider, or employee is engaged in the performance of his or her official duties or while the health care professional is on duty at a hospital or a health clinic.

(2) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle shall be a Class IIIA felony.

Source: Laws 1995, LB 371, § 31; Laws 1997, LB 364, § 12; Laws 2005, LB 538, § 4; Laws 2010, LB771, § 7; Laws 2014, LB811, § 21; Laws 2020, LB1002, § 9.
Operative date November 14, 2020.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-934 Assault with a bodily fluid against a public safety officer; penalty; order to collect evidence.

(1) Any person who knowingly and intentionally strikes any public safety officer with any bodily fluid is guilty of assault with a bodily fluid against a public safety officer.

(2) Except as provided in subsection (3) of this section, assault with a bodily fluid against a public safety officer is a Class I misdemeanor.

(3) Assault with a bodily fluid against a public safety officer is a Class IIIA felony if the person committing the offense strikes with a bodily fluid the eyes, mouth, or skin of a public safety officer and knew the source of the bodily fluid was infected with the human immunodeficiency virus, hepatitis B, or hepatitis C at the time the offense was committed.

(4) Upon a showing of probable cause by affidavit to a judge of this state that an offense as defined in subsection (1) of this section has been committed and that identifies the probable source of the bodily fluid or bodily fluids used to commit the offense, the judge shall grant an order or issue a search warrant authorizing the collection of any evidence, including any bodily fluid or medical records or the performance of any medical or scientific testing or analysis, that may assist with the determination of whether or not the person committing the offense or the person from whom the person committing the offense obtained the bodily fluid or bodily fluids is infected with the human immunodeficiency virus, hepatitis B, or hepatitis C.

(5) As used in this section:

(a) Bodily fluid means any naturally produced secretion or waste product generated by the human body and shall include, but not be limited to, any quantity of human blood, urine, saliva, mucus, vomitus, seminal fluid, or feces; and

(b) Public safety officer includes any of the following persons who are engaged in the performance of their official duties at the time of the offense: A

peace officer; a probation officer; a firefighter; an emergency care provider as defined in section 28-929.01; a health care professional as defined in section 28-929.01; an employee of a county, city, or village jail; an employee of the Department of Correctional Services; an employee of the secure youth confinement facility operated by the Department of Correctional Services, if the person committing the offense is committed to such facility; an employee of the Youth Rehabilitation and Treatment Center-Geneva or the Youth Rehabilitation and Treatment Center-Kearney; or an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act.

Source: Laws 2011, LB226, § 2; Laws 2014, LB811, § 22; Laws 2018, LB913, § 2; Laws 2020, LB1002, § 10.
Operative date November 14, 2020.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-936 Electronic communication device; possession within facility; provided to inmate; penalty; seizure; disposition.

(1) A person commits an offense if he or she intentionally introduces within a facility, or intentionally provides an inmate of a facility with, any electronic communication device. An inmate commits an offense if he or she intentionally procures, makes, or otherwise provides himself or herself with, or has in his or her possession, any electronic communication device.

(2) This section does not apply to:

(a) An attorney or an attorney's agent visiting an inmate who is a client of such attorney;

(b) The Public Counsel or any employee of his or her office;

(c) A peace officer acting under his or her authority;

(d) An emergency responder or a firefighter responding to emergency incidents within a facility; or

(e) Any person acting with the permission of the Director of Correctional Services or in accordance with rules, regulations, or policies of the Department of Correctional Services.

(3) For purposes of this section:

(a) Facility has the same meaning as in section 83-170; and

(b) Electronic communication device means any device which, in its ordinary and intended use, transmits by electronic means writings, sounds, visual images, or data of any nature to another electronic communication device. Electronic communication device does not include any device provided to an inmate by the Department of Correctional Services.

(4) A violation of this section is a Class I misdemeanor.

(5) An electronic communication device involved in a violation of this section shall be subject to seizure by the Department of Correctional Services or a peace officer, and disposition may be made in accordance with the method of disposition directed for contraband in sections 29-818 and 29-820.

Source: Laws 2019, LB686, § 3.

ARTICLE 10
OFFENSES AGAINST ANIMALS

Section

28-1009.01. Violence on a service animal; interference with a service animal; penalty.

28-1009.01 Violence on a service animal; interference with a service animal; penalty.

(1) A person commits the offense of violence on a service animal when he or she (a) intentionally injures, harasses, or threatens to injure or harass or (b) attempts to intentionally injure, harass, or threaten an animal that he or she knows or has reason to believe is a service animal for a blind or visually impaired person, a deaf or hard of hearing person, or a physically limited person.

(2) A person commits the offense of interference with a service animal when he or she (a) intentionally impedes, interferes, or threatens to impede or interfere or (b) attempts to intentionally impede, interfere, or threaten to impede or interfere with an animal that he or she knows or has reason to believe is a service animal for a blind or visually impaired person, a deaf or hard of hearing person, or a physically limited person.

(3) Evidence that the defendant initiated or continued conduct toward an animal as described in subsection (1) or (2) of this section after being requested to avoid or discontinue such conduct by the blind, visually impaired, deaf or hard of hearing, or physically limited person being served or assisted by the animal shall create a rebuttable presumption that the conduct of the defendant was initiated or continued intentionally.

(4) For purposes of this section:

(a) Blind person means a person with totally impaired vision or with vision, with or without correction, which is so severely impaired that the primary means of receiving information is through other sensory input, including, but not limited to, braille, mechanical reproduction, synthesized speech, or readers;

(b) Deaf person means a person with totally impaired hearing or with hearing, with or without amplification, which is so severely impaired that the primary means of receiving spoken language is through other sensory input, including, but not limited to, lip reading, sign language, finger spelling, or reading;

(c) Hard of hearing person means a person who is unable to hear air conduction thresholds at an average of forty decibels or greater in the person's better ear;

(d) Physically limited person means a person having limited ambulatory abilities, including, but not limited to, having a permanent impairment or condition that requires the person to use a wheelchair or to walk with difficulty or insecurity to the extent that the person is insecure or exposed to danger; and

(e) Visually impaired person means a person having a visual acuity of 20/200 or less in the person's better eye with correction or having a limitation to the person's field of vision so that the widest diameter of the visual field subtends an angular distance not greater than twenty degrees.

(5) Violence on a service animal or interference with a service animal is a Class III misdemeanor.

Source: Laws 1997, LB 814, § 1; Laws 2008, LB806, § 11; Laws 2019, LB248, § 5.

ARTICLE 11

GAMBLING

Section

28-1107. Possession of a gambling device; penalty; affirmative defense.

28-1107 Possession of a gambling device; penalty; affirmative defense.

(1) A person commits the offense of possession of a gambling device if he or she manufactures, sells, transports, places, possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody, or use of any gambling device, knowing that it shall be used in the advancement of unlawful gambling activity.

(2) The owner or operator of a retail establishment who is not a manufacturer, distributor, or seller of mechanical amusement devices as defined under the Mechanical Amusement Device Tax Act, shall have an affirmative defense to possession of a gambling device described in subsection (1) of this section if the device bears an unexpired mechanical amusement device decal as required by such act. However, such affirmative defense may be overcome if the owner or operator had actual knowledge that operation of the device constituted unlawful gambling activity at any time such device was operated on the premises of the retail establishment.

(3) Notwithstanding any other provisions of this section, any mechanical game or device classified by the federal government as an illegal gambling device and requiring a federal Gambling Device Tax Stamp as required by the Internal Revenue Service in its administration of 26 U.S.C. 4461 and 4462, amended July 1, 1965, by Public Law 89-44, is hereby declared to be illegal.

(4) Possession of a gambling device is a Class II misdemeanor.

Source: Laws 1977, LB 38, § 223; Laws 1978, LB 900, § 2; Laws 1979, LB 152, § 7; Laws 1987, LB 523, § 4; Laws 2019, LB538, § 1.

Cross References

Mechanical Amusement Device Tax Act, see section 77-3011.

ARTICLE 12

OFFENSES AGAINST PUBLIC HEALTH AND SAFETY

Section

- 28-1201. Terms, defined.
- 28-1204.04. Unlawful possession of a firearm at a school; penalty; exceptions; confiscation of certain firearms; disposition.
- 28-1204.05. Unlawful possession of a firearm by a prohibited juvenile offender; penalty; exceptions; reinstatement of right to possess firearm; procedure; court; considerations; order; how construed.
- 28-1206. Possession of a deadly weapon by a prohibited person; penalty.
- 28-1212.03. Stolen firearm; prohibited acts; violation; 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; Laws 2018, LB990, § 2.

28-1204.04 Unlawful possession of a firearm at a school; penalty; exceptions; confiscation of certain firearms; disposition.

(1) Any person who possesses a firearm in a school, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event is guilty of the offense of unlawful possession of a firearm at a school. Unlawful possession of a firearm at a school is a Class IV felony. This subsection shall not apply to (a) the issuance of firearms to or possession by members of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers Training Corps or peace officers or other duly authorized law enforcement officers when on duty or training, (b) the possession of firearms by peace officers or other duly authorized law enforcement officers when contracted by a school to provide school security or school event control services, (c)

firearms which may lawfully be possessed by the person receiving instruction, for instruction under the immediate supervision of an adult instructor, (d) firearms which may lawfully be possessed by a member of a college or university firearm team, to include rifle, pistol, and shotgun disciplines, within the scope of such person's duties as a member of the team, (e) firearms which may lawfully be possessed by a person employed by a college or university in this state as part of an agriculture or a natural resources program of such college or university, within the scope of such person's employment, (f) firearms contained within a private vehicle operated by a nonstudent adult which are not loaded and (i) are encased or (ii) are in a locked firearm rack that is on a motor vehicle, (g) firearms which may lawfully be possessed by a person for the purpose of using them, with the approval of the school, in a historical reenactment, in a hunter education program, or as part of an honor guard, or (h) a handgun carried as a concealed handgun by a valid holder of a permit issued under the Concealed Handgun Permit Act in a vehicle or on his or her person while riding in or on a vehicle into or onto any parking area, which is open to the public and used by a school if, prior to exiting the vehicle, the handgun is locked inside the glove box, trunk, or other compartment of the vehicle, a storage box securely attached to the vehicle, or, if the vehicle is a motorcycle, other than an autocycle, a hardened compartment securely attached to the motorcycle while the vehicle is in or on such parking area, except as prohibited by federal law. For purposes of this subsection, encased means enclosed in a case that is expressly made for the purpose of containing a firearm and that is completely zipped, snapped, buckled, tied, or otherwise fastened with no part of the firearm exposed.

(2) Any firearm possessed in violation of subsection (1) of this section shall be confiscated without warrant by a peace officer or may be confiscated without warrant by school administrative or teaching personnel. Any firearm confiscated by school administrative or teaching personnel shall be delivered to a peace officer as soon as practicable.

(3) Any firearm confiscated by or given to a peace officer pursuant to subsection (2) of this section shall be declared a common nuisance and shall be held by the peace officer prior to his or her delivery of the firearm to the property division of the law enforcement agency which employs the peace officer. The property division of such law enforcement agency shall hold such firearm for as long as the firearm is needed as evidence. After the firearm is no longer needed as evidence, it shall be destroyed in such manner as the court may direct.

(4) Whenever a firearm is confiscated and held pursuant to this section or section 28-1204.02, the peace officer who received such firearm shall cause to be filed within ten days after the confiscation a petition for destruction of such firearm. The petition shall be filed in the district court of the county in which the confiscation is made. The petition shall describe the firearm held, state the name of the owner, if known, allege the essential elements of the violation which caused the confiscation, and conclude with a prayer for disposition and destruction in such manner as the court may direct. At any time after the confiscation of the firearm and prior to court disposition, the owner of the firearm seized may petition the district court of the county in which the confiscation was made for possession of the firearm. The court shall release the firearm to such owner only if the claim of ownership can reasonably be shown to be true and either (a) the owner of the firearm can show that the firearm was

taken from his or her property or place of business unlawfully or without the knowledge and consent of the owner and that such property or place of business is different from that of the person from whom the firearm was confiscated or (b) the owner of the firearm is acquitted of the charge of unlawful possession of a handgun in violation of section 28-1204, unlawful transfer of a firearm to a juvenile, or unlawful possession of a firearm at a school. No firearm having significant antique value or historical significance as determined by the Nebraska State Historical Society shall be destroyed. If a firearm has significant antique value or historical significance, it shall be sold at auction and the proceeds shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1994, LB 988, § 6; Laws 2002, LB 82, § 8; Laws 2009, LB63, § 13; Laws 2009, LB430, § 8; Laws 2011, LB512, § 1; Laws 2014, LB390, § 1; Laws 2018, LB321, § 1; Laws 2018, LB909, § 1.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

28-1204.05 Unlawful possession of a firearm by a prohibited juvenile offender; penalty; exceptions; reinstatement of right to possess firearm; procedure; court; considerations; order; how construed.

(1) Except as provided in subsections (3) and (4) of this section, a person under the age of twenty-five years who knowingly possesses a firearm commits the offense of possession of a firearm by a prohibited juvenile offender if he or she has previously been adjudicated an offender in juvenile court for an act which would constitute a felony or an act which would constitute a misdemeanor or crime of domestic violence.

(2) Possession of a firearm by a prohibited juvenile offender is a Class IV felony for a first offense and a Class IIIA felony for a second or subsequent offense.

(3) Subsection (1) of this section does not apply to the possession of firearms by members of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers Training Corps or peace officers or other duly authorized law enforcement officers when on duty or training.

(4)(a) Prior to reaching the age of twenty-five years, a person subject to the prohibition of subsection (1) of this section may file a petition for exemption from such prohibition and thereby have his or her right to possess a firearm reinstated. A petitioner who is younger than nineteen years of age shall petition the juvenile court in which he or she was adjudicated for the underlying offense. A petitioner who is nineteen years of age or older shall petition the district court in the county in which he or she resides.

(b) In determining whether to grant a petition filed under subdivision (4)(a) of this section, the court shall consider:

- (i) The behavior of the person after the underlying adjudication;
- (ii) The likelihood that the person will engage in further criminal activity; and
- (iii) Any other information the court considers relevant.

(c) The court may grant a petition filed under subdivision (4)(a) of this section and issue an order exempting the person from the prohibition of subsection (1) of this section when in the opinion of the court the order will be in the best interests of the person and consistent with the public welfare.

(5) The fact that a person subject to the prohibition under subsection (1) of this section has reached the age of twenty-five or that a court has granted a petition under subdivision (4)(a) of this section shall not be construed to mean that such adjudication has been set aside. Nothing in this section shall be construed to authorize the setting aside of such an adjudication or conviction except as otherwise provided by law.

(6) For purposes of this section, misdemeanor crime of domestic violence has the same meaning as in section 28-1206.

Source: Laws 2018, LB990, § 3.

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

(iv) Is on probation pursuant to a deferred judgment for a felony under section 29-2292; 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; Laws 2018, LB848, § 1; Laws 2019, LB686, § 4.

28-1212.03 Stolen firearm; prohibited acts; violation; penalty.

(1) Any person who possesses, receives, retains, or disposes of a stolen firearm knowing that it has been or believing that it has been stolen shall be guilty of a Class IIA felony unless the firearm is possessed, received, retained, or disposed of with intent to restore it to the owner.

(2) Any person who possesses, receives, retains, or disposes of a stolen firearm when such person should have known, or had reasonable cause to believe, that such firearm has been stolen shall be guilty of a Class IIA felony unless the firearm is possessed, received, retained, or disposed of with intent to restore it to the owner.

Source: Laws 1991, LB 477, § 1; Laws 2009, LB63, § 19; Laws 2015, LB605, § 53; Laws 2020, LB582, § 1.
Effective date November 14, 2020.

ARTICLE 13

MISCELLANEOUS OFFENSES

(c) TELEPHONE COMMUNICATIONS

Section

28-1310. Intimidation by telephone call or electronic communication; penalty.

(r) UNLAWFUL MEMBERSHIP RECRUITMENT

28-1351. Unlawful membership recruitment into an organization or association; penalty.

(s) PUBLIC PROTECTION ACT

28-1354. Terms, defined.

28-1356. Violation; penalty.

(c) TELEPHONE COMMUNICATIONS

28-1310 Intimidation by telephone call or electronic communication; penalty.

(1) A person commits the offense of intimidation by telephone call or electronic communication if, with intent to intimidate, threaten, or harass an individual, the person telephones such individual or transmits an electronic communication directly to such individual, whether or not conversation or an electronic response ensues, and the person:

(a) Uses obscene language or suggests any obscene act;

(b) Threatens to inflict physical or mental injury to such individual or any other person or physical injury to the property of such individual or any other person; or

(c) Attempts to extort property, money, or other thing of value from such individual or any other person.

(2) The offense shall be deemed to have been committed either at the place where the call or electronic communication was initiated or where it was received.

(3) Intimidation by telephone call or electronic communication is a Class III misdemeanor.

(4) For purposes of this section, electronic communication means any writing, sound, visual image, or data of any nature that is received or transmitted by an electronic communication device as defined in section 28-833.

Source: Laws 1977, LB 38, § 294; Laws 2002, LB 1105, § 433; Laws 2018, LB773, § 3; Laws 2019, LB630, § 4.

(r) UNLAWFUL MEMBERSHIP RECRUITMENT

28-1351 Unlawful membership recruitment into an organization or association; penalty.

(1) A person commits the offense of unlawful membership recruitment into an organization or association when he or she knowingly and intentionally coerces, intimidates, threatens, or inflicts bodily harm upon another person in order to entice that other person to join or prevent that other person from leaving any organization, group, enterprise, or association whose members, individually or collectively, engage in or have engaged in any of the following criminal acts for the benefit of, at the direction of, or on behalf of the organization, group, enterprise, or association or any of its members:

- (a) Robbery under section 28-324;
- (b) Arson in the first, second, or third degree under section 28-502, 28-503, or 28-504, respectively;
- (c) Burglary under section 28-507;
- (d) Murder in the first degree, murder in the second degree, or manslaughter under section 28-303, 28-304, or 28-305, respectively;
- (e) Violations of the Uniform Controlled Substances Act that involve possession with intent to deliver, distribution, delivery, or manufacture of a controlled substance;
- (f) Unlawful use, possession, or discharge of a firearm or other deadly weapon under sections 28-1201 to 28-1212.04;
- (g) Assault in the first degree or assault in the second degree under section 28-308 or 28-309, respectively;
- (h) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first, second, or third degree under section 28-929, 28-930, or 28-931, respectively, or assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle under section 28-931.01;
- (i) Theft by unlawful taking or disposition under section 28-511;
- (j) Theft by receiving stolen property under section 28-517;
- (k) Theft by deception under section 28-512;
- (l) Theft by extortion under section 28-513;

- (m) Kidnapping under section 28-313;
 - (n) Any forgery offense under sections 28-602 to 28-605;
 - (o) Criminal impersonation under section 28-638;
 - (p) Tampering with a publicly exhibited contest under section 28-614;
 - (q) Unauthorized use of a financial transaction device or criminal possession of a financial transaction device under section 28-620 or 28-621, respectively;
 - (r) Pandering under section 28-802;
 - (s) Bribery, bribery of a witness, or bribery of a juror under section 28-917, 28-918, or 28-920, respectively;
 - (t) Tampering with a witness or an informant or jury tampering under section 28-919;
 - (u) Unauthorized application of graffiti under section 28-524;
 - (v) Dogfighting, cockfighting, bearbaiting, or pitting an animal against another under section 28-1005; or
 - (w) Promoting gambling in the first degree under section 28-1102.
- (2) Unlawful membership recruitment into an organization or association is a Class IV felony.

Source: Laws 2009, LB63, § 21; Laws 2014, LB811, § 23; Laws 2018, LB990, § 4.

Cross References

Uniform Controlled Substances Act, see section 28-401.01.

(s) PUBLIC PROTECTION ACT

28-1354 Terms, defined.

For purposes of the Public Protection Act:

- (1) Enterprise means any individual, sole proprietorship, partnership, corporation, trust, association, or any legal entity, union, or group of individuals associated in fact although not a legal entity, and shall include illicit as well as licit enterprises as well as other entities;
- (2) Pattern of racketeering activity means a cumulative loss for one or more victims or gains for the enterprise of not less than one thousand five hundred dollars resulting from at least two acts of racketeering activity, one of which occurred after August 30, 2009, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity;
- (3) Until January 1, 2017, person means any individual or entity, as defined in section 21-2014, holding or capable of holding a legal, equitable, or beneficial interest in property. Beginning January 1, 2017, person means any individual or entity, as defined in section 21-214, holding or capable of holding a legal, equitable, or beneficial interest in property;
- (4) Prosecutor includes the Attorney General of the State of Nebraska, the deputy attorney general, assistant attorneys general, a county attorney, a deputy county attorney, or any person so designated by the Attorney General, a county attorney, or a court of the state to carry out the powers conferred by the act;
- (5) Racketeering activity includes the commission of, criminal attempt to commit, conspiracy to commit, aiding and abetting in the commission of,

aiding in the consummation of, acting as an accessory to the commission of, or the solicitation, coercion, or intimidation of another to commit or aid in the commission of any of the following:

(a) Offenses against the person which include: Murder in the first degree under section 28-303; murder in the second degree under section 28-304; manslaughter under section 28-305; assault in the first degree under section 28-308; assault in the second degree under section 28-309; assault in the third degree under section 28-310; terroristic threats under section 28-311.01; kidnapping under section 28-313; false imprisonment in the first degree under section 28-314; false imprisonment in the second degree under section 28-315; sexual assault in the first degree under section 28-319; and robbery under section 28-324;

(b) Offenses relating to controlled substances which include: To unlawfully manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance under subsection (1) of section 28-416; possession of marijuana weighing more than one pound under subsection (12) of section 28-416; possession of money used or intended to be used to facilitate a violation of subsection (1) of section 28-416 prohibited under subsection (17) of section 28-416; any violation of section 28-418; to unlawfully manufacture, distribute, deliver, or possess with intent to distribute or deliver an imitation controlled substance under section 28-445; possession of anhydrous ammonia with the intent to manufacture methamphetamine under section 28-451; and possession of ephedrine, pseudoephedrine, or phenylpropanolamine with the intent to manufacture methamphetamine under section 28-452;

(c) Offenses against property which include: Arson in the first degree under section 28-502; arson in the second degree under section 28-503; arson in the third degree under section 28-504; burglary under section 28-507; theft by unlawful taking or disposition under section 28-511; theft by shoplifting under section 28-511.01; theft by deception under section 28-512; theft by extortion under section 28-513; theft of services under section 28-515; theft by receiving stolen property under section 28-517; criminal mischief under section 28-519; and unlawfully depriving or obtaining property or services using a computer under section 28-1344;

(d) Offenses involving fraud which include: Burning to defraud an insurer under section 28-505; forgery in the first degree under section 28-602; forgery in the second degree under section 28-603; criminal possession of a forged instrument under section 28-604; criminal possession of written instrument forgery devices under section 28-605; criminal impersonation under section 28-638; identity theft under section 28-639; identity fraud under section 28-640; false statement or book entry under section 28-612; tampering with a publicly exhibited contest under section 28-614; issuing a false financial statement for purposes of obtaining a financial transaction device under section 28-619; unauthorized use of a financial transaction device under section 28-620; criminal possession of a financial transaction device under section 28-621; unlawful circulation of a financial transaction device in the first degree under section 28-622; unlawful circulation of a financial transaction device in the second degree under section 28-623; criminal possession of a blank financial transaction device under section 28-624; criminal sale of a blank financial transaction device under section 28-625; criminal possession of a financial transaction forgery device under section 28-626; unlawful manufacture of a financial

transaction device under section 28-627; laundering of sales forms under section 28-628; unlawful acquisition of sales form processing services under section 28-629; unlawful factoring of a financial transaction device under section 28-630; and fraudulent insurance acts under section 28-631;

(e) Offenses involving governmental operations which include: Abuse of public records under section 28-911; perjury or subornation of perjury under section 28-915; bribery under section 28-917; bribery of a witness under section 28-918; tampering with a witness or informant or jury tampering under section 28-919; bribery of a juror under section 28-920; assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree under section 28-929; assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree under section 28-930; assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree under section 28-931; and assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle under section 28-931.01;

(f) Offenses involving gambling which include: Promoting gambling in the first degree under section 28-1102; possession of gambling records under section 28-1105; gambling debt collection under section 28-1105.01; and possession of a gambling device under section 28-1107;

(g) Offenses relating to firearms, weapons, and explosives which include: Carrying a concealed weapon under section 28-1202; transportation or possession of machine guns, short rifles, or short shotguns under section 28-1203; unlawful possession of a handgun under section 28-1204; unlawful transfer of a firearm to a juvenile under section 28-1204.01; possession of a firearm by a prohibited juvenile offender under section 28-1204.05; using a deadly weapon to commit a felony or possession of a deadly weapon during the commission of a felony under section 28-1205; possession of a deadly weapon by a prohibited person under section 28-1206; possession of a defaced firearm under section 28-1207; defacing a firearm under section 28-1208; unlawful discharge of a firearm under section 28-1212.02; possession, receipt, retention, or disposition of a stolen firearm under section 28-1212.03; unlawful possession of explosive materials in the first degree under section 28-1215; unlawful possession of explosive materials in the second degree under section 28-1216; unlawful sale of explosives under section 28-1217; use of explosives without a permit under section 28-1218; obtaining an explosives permit through false representations under section 28-1219; possession of a destructive device under section 28-1220; threatening the use of explosives or placing a false bomb under section 28-1221; using explosives to commit a felony under section 28-1222; using explosives to damage or destroy property under section 28-1223; and using explosives to kill or injure any person under section 28-1224;

(h) Any violation of the Securities Act of Nebraska pursuant to section 8-1117;

(i) Any violation of the Nebraska Revenue Act of 1967 pursuant to section 77-2713;

(j) Offenses relating to public health and morals which include: Prostitution under section 28-801; pandering under section 28-802; keeping a place of prostitution under section 28-804; labor trafficking, sex trafficking, labor trafficking of a minor, or sex trafficking of a minor under section 28-831; a violation of section 28-1005; and any act relating to the visual depiction of sexually explicit conduct prohibited in the Child Pornography Prevention Act; and

(k) A violation of the Computer Crimes Act;

(6) State means the State of Nebraska or any political subdivision or any department, agency, or instrumentality thereof; and

(7) Unlawful debt means a debt of at least one thousand five hundred dollars:

(a) Incurred or contracted in gambling activity which was in violation of federal law or the law of the state or which is unenforceable under state or federal law in whole or in part as to principal or interest because of the laws relating to usury; or

(b) Which was incurred in connection with the business of gambling in violation of federal law or the law of the state or the business of lending money or a thing of value at a rate usurious under state law if the usurious rate is at least twice the enforceable rate.

Source: Laws 2009, LB155, § 4; Laws 2010, LB771, § 13; Laws 2013, LB255, § 8; Laws 2014, LB749, § 277; Laws 2014, LB811, § 24; Laws 2016, LB1094, § 10; Laws 2018, LB990, § 5.

Cross References

Child Pornography Prevention Act, see section 28-1463.01.

Computer Crimes Act, see section 28-1341.

Nebraska Revenue Act of 1967, see section 77-2701.

Securities Act of Nebraska, see section 8-1123.

28-1356 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.

ARTICLE 14

NONCODE PROVISIONS

(c) TOBACCO, ELECTRONIC NICOTINE DELIVERY SYSTEMS,
OR ALTERNATIVE NICOTINE PRODUCTS

Section

- 28-1418. Tobacco; electronic nicotine delivery systems; alternative nicotine products; use by person under age of twenty-one years; penalty.
- 28-1418.01. Terms, defined.
- 28-1419. Tobacco; electronic nicotine delivery systems; alternative nicotine products; certain sales; penalty; compliance determination; assistance authorized; conditions.
- 28-1420. License requisite for sale; violation; penalty.
- 28-1421. License; where obtained; prohibited sales.
- 28-1423. License; term; fees; false swearing; penalty.
- 28-1424. License; rights of licensee.
- 28-1425. Licensees; sale of tobacco, electronic nicotine delivery systems, or alternative nicotine products to persons under the age of twenty-one years; penalty.
- 28-1427. Person misrepresenting age to obtain tobacco, electronic nicotine delivery systems, or alternative nicotine products; penalty.
- 28-1429.01. Vending machines; legislative findings.
- 28-1429.02. Vending machines; restrictions on use; violation; penalty; local ordinances; authorized.
- 28-1429.03. Self-service display; restrictions on use; violation; penalty.

(k) CHILD PORNOGRAPHY PREVENTION ACT

- 28-1463.03. Visual depiction of sexually explicit conduct; prohibited acts.
- 28-1463.05. Visual depiction of sexually explicit acts related to possession; violation; penalty.

(c) TOBACCO, ELECTRONIC NICOTINE DELIVERY SYSTEMS,
OR ALTERNATIVE NICOTINE PRODUCTS

28-1418 Tobacco; electronic nicotine delivery systems; alternative nicotine products; use by person under age of twenty-one years; penalty.

Whoever, being a person under the age of twenty-one years, shall smoke cigarettes or cigars, use electronic nicotine delivery systems or alternative nicotine products, or use tobacco in any form whatever, in this state, shall be guilty of a Class V misdemeanor. Any person charged with a violation of this section may be free from prosecution if he or she furnishes evidence for the conviction of the person or persons selling or giving him or her the cigarettes, cigars, electronic nicotine delivery systems, alternative nicotine products, or tobacco.

Source: Laws 1911, c. 181, §§ 1, 2, 3, p. 561; R.S.1913, § 8846; C.S.1922, § 9847; C.S.1929, § 28-1021; R.S.1943, § 28-1020; Laws 1977, LB 40, § 103; R.R.S.1943, § 28-1020, (1975); Laws 2014, LB863, § 16; Laws 2019, LB149, § 1; Laws 2019, LB397, § 1; Laws 2020, LB1064, § 1.
Operative date October 1, 2020.

28-1418.01 Terms, defined.

For purposes of sections 28-1418 to 28-1429.03:

(1) Alternative nicotine product means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, ab-

sorbed, dissolved, or ingested by any other means. Alternative nicotine product does not include any electronic nicotine delivery system, cigarette, cigar, or other tobacco product, or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act;

(2) Cigarette means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco, (b) tobacco, in any form, that is functional in the product which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette, or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subdivision (2)(a) of this section;

(3)(a) Electronic nicotine delivery system means any product or device containing nicotine, tobacco, or tobacco derivatives that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to simulate smoking by delivering the nicotine, tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol form to a person inhaling from the product or device.

(b) Electronic nicotine delivery system includes, but is not limited to, the following:

(i) Any substance containing nicotine, tobacco, or tobacco derivatives, whether sold separately or sold in combination with a product or device that is intended to deliver to a person nicotine, tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol form;

(ii) Any product or device marketed, manufactured, distributed, or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, or similar products, names, descriptors, or devices; and

(iii) Any component, part, or accessory of such a product or device that is used during operation of the product or device when sold in combination with any substance containing nicotine, tobacco, or tobacco derivatives.

(c) Electronic nicotine delivery system does not include the following:

(i) An alternative nicotine product, cigarette, cigar, or other tobacco product, or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or

(ii) Any component, part, or accessory of such a product or device that is used during operation of the product or device when not sold in combination with any substance containing nicotine, tobacco, or tobacco derivatives;

(4) Self-service display means a retail display that contains a tobacco product, a tobacco-derived product, an electronic nicotine delivery system, or an alternative nicotine product and is located in an area openly accessible to a retailer's customers and from which such customers can readily access the product without the assistance of a salesperson. Self-service display does not include a display case that holds tobacco products, tobacco-derived products, electronic nicotine delivery systems, or alternative nicotine products behind locked doors; and

(5) Tobacco specialty store means a retail store that (a) derives at least seventy-five percent of its revenue from tobacco products, tobacco-derived products, electronic nicotine delivery systems, or alternative nicotine products and (b) does not permit persons under the age of twenty-one years to enter the premises unless accompanied by a parent or legal guardian, except that until January 1, 2022, a tobacco specialty store may allow an employee who is nineteen or twenty years of age to work in the store.

Source: Laws 2014, LB863, § 17; Laws 2019, LB149, § 2; Laws 2019, LB397, § 2; Laws 2020, LB1064, § 2.
Operative date October 1, 2020.

28-1419 Tobacco; electronic nicotine delivery systems; alternative nicotine products; certain sales; penalty; compliance determination; assistance authorized; conditions.

(1) Whoever shall sell, give, or furnish, in any way, any tobacco in any form whatever, or any cigars, cigarettes, cigarette paper, electronic nicotine delivery systems, or alternative nicotine products, to any person under twenty-one years of age, is guilty of a Class III misdemeanor for each offense.

(2)(a) In order to further the public policy of deterring licensees or other persons from violating subsection (1) of this section, a person who is at least fifteen years of age but under twenty-one years of age may assist a peace officer in determining compliance with such subsection if:

(i) The parent or legal guardian of the person has given written consent for the person to participate in such compliance check if such person is under nineteen years of age;

(ii) The person is an employee, a volunteer, or an intern with a state or local law enforcement agency;

(iii) The person is acting within the scope of his or her assigned duties as part of a law enforcement investigation;

(iv) The person does not use or consume a tobacco product as part of such duties; and

(v) The person is not actively assigned to a diversion program, is not a party to a pending criminal proceeding or a proceeding pending under the Nebraska Juvenile Code, and is not on probation.

(b) Any person under the age of twenty-one years acting in accordance with and under the authority of this subsection shall not be in violation of section 28-1427.

Source: Laws 1885, c. 105, §§ 1, 2, p. 394; Laws 1903, c. 138, § 1, p. 643; R.S.1913, § 8847; C.S.1922, § 9848; C.S.1929, § 28-1022; R.S. 1943, § 28-1021; Laws 1977, LB 40, § 104; R.R.S.1943, § 28-1021, (1975); Laws 2014, LB863, § 18; Laws 2019, LB149, § 3; Laws 2019, LB397, § 3; Laws 2020, LB1064, § 3.
Operative date October 1, 2020.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

28-1420 License requisite for sale; violation; penalty.

It shall be unlawful for any person, partnership, limited liability company, or corporation to sell, keep for sale, or give away in course of trade, any cigars, tobacco, electronic nicotine delivery systems, cigarettes, or cigarette material to anyone without first obtaining a license as provided in sections 28-1421 and 28-1422. It shall also be unlawful for any wholesaler to sell or deliver any cigars, tobacco, electronic nicotine delivery systems, cigarettes, or cigarette material to any person, partnership, limited liability company, or corporation who, at the time of such sale or delivery, is not the recipient of a valid tobacco license for the current year to retail the same as provided in such sections. It shall also be unlawful for any person, partnership, limited liability company, or corporation to purchase or receive, for purposes of resale, any cigars, tobacco, electronic nicotine delivery systems, cigarettes, or cigarette material if such person, partnership, limited liability company, or corporation is not the recipient of a valid tobacco license to retail such tobacco products at the time the same are purchased or received. Whoever shall be found guilty of violating this section shall be guilty of a Class III misdemeanor for each offense.

Source: Laws 1919, c. 180, § 1, p. 401; C.S.1922, § 9849; C.S.1929, § 28-1023; Laws 1941, c. 50, § 1, p. 242; C.S.Supp.,1941, § 28-1023; R.S.1943, § 28-1022; Laws 1977, LB 40, § 105; R.R.S.1943, § 28-1022, (1975); Laws 1993, LB 121, § 187; Laws 2019, LB149, § 4; Laws 2019, LB397, § 4.

28-1421 License; where obtained; prohibited sales.

Licenses for the sale of cigars, tobacco, electronic nicotine delivery systems, cigarettes, and cigarette material to persons twenty-one years of age or over shall be issued to individuals, partnerships, limited liability companies, and corporations by the clerk or finance director of any city or village and by the county clerk of any county upon application duly made as provided in section 28-1422. The sale of cigarettes or cigarette materials that contain perfumes or drugs in any form is prohibited and is not licensed by the provisions of this section. Only cigarettes and cigarette material containing pure white paper and pure tobacco shall be licensed.

Source: Laws 1919, c. 180, § 2, p. 401; C.S.1922, § 9850; C.S.1929, § 28-1024; R.S.1943, § 28-1023; Laws 1961, c. 128, § 1, p. 379; R.R.S.1943, § 28-1023, (1975); Laws 1993, LB 121, § 188; Laws 2019, LB149, § 5; Laws 2019, LB397, § 5; Laws 2020, LB1064, § 4.

Operative date October 1, 2020.

28-1423 License; term; fees; false swearing; penalty.

The term for which such license shall run shall be from the date of filing such application and paying such license fee to and including December 31 of the calendar year in which application for such license is made, and the license fee for any person, partnership, limited liability company, or corporation selling at retail shall be twenty-five dollars in cities of the metropolitan class, fifteen dollars in cities of the primary and first classes, and ten dollars in cities of all other classes and in towns and villages and in locations outside of the limits of cities, towns, and villages. Any person, partnership, limited liability company, or corporation selling annually in the aggregate more than one hundred fifty thousand cigars, packages of cigarettes, electronic nicotine delivery systems,

and packages of tobacco in any form, at wholesale, shall pay a license fee of one hundred dollars, and if such combined annual sales amount to less than one hundred fifty thousand cigars, packages of cigarettes, electronic nicotine delivery systems, and packages of tobacco, the annual license fee shall be fifteen dollars. No wholesaler's license shall be issued in any year on a less basis than one hundred dollars per annum unless the applicant for the same shall file with such application a statement duly sworn to by himself or herself, or if applicant is a partnership, by a member of the firm, or if a limited liability company, by a member or manager of the company, or if a corporation, by an officer or manager thereof, that in the past such wholesaler's combined sales of cigars, packages of cigarettes, electronic nicotine delivery systems, and packages of tobacco in every form have not exceeded in the aggregate one hundred fifty thousand annually, and that such sales will not exceed such aggregate amount for the current year for which the license is to issue. Any person swearing falsely in such affidavit shall be guilty of perjury and upon conviction thereof shall be punished as provided by section 28-915 and such wholesaler's license shall be revoked until the full license fee is paid. If application for license is made after July 1 of any calendar year, the fee shall be one-half of the fee provided in this section.

Source: Laws 1919, c. 180, § 4, p. 402; C.S.1922, § 9852; Laws 1923, c. 136, § 1, p. 335; Laws 1927, c. 198, § 1, p. 565; C.S.1929, § 28-1026; R.S.1943, § 28-1025; Laws 1978, LB 748, § 20; R.R.S. 1943, § 28-1025, (1975); Laws 1993, LB 121, § 190; Laws 2019, LB149, § 6; Laws 2019, LB397, § 6.

28-1424 License; rights of licensee.

The license provided for in sections 28-1421 and 28-1422 shall, when issued, authorize the sale of cigars, tobacco, electronic nicotine delivery systems, cigarettes, and cigarette material by the licensee and employees, to persons twenty-one years of age or over, at the place of business described in such license for the term therein authorized, unless the license is forfeited as provided in section 28-1425.

Source: Laws 1919, c. 180, § 5, p. 402; C.S.1922, § 9853; C.S.1929, § 28-1027; R.S.1943, § 28-1026; Laws 1957, c. 100, § 2, p. 359; R.R.S.1943, § 28-1026, (1975); Laws 2019, LB149, § 7; Laws 2019, LB397, § 7; Laws 2020, LB1064, § 5.
Operative date October 1, 2020.

28-1425 Licensees; sale of tobacco, electronic nicotine delivery systems, or alternative nicotine products to persons under the age of twenty-one years; penalty.

Any licensee who shall sell, give, or furnish in any way to any person under the age of twenty-one years, or who shall willingly allow to be taken from his or her place of business by any person under the age of twenty-one years, any cigars, tobacco, cigarettes, cigarette material, electronic nicotine delivery systems, or alternative nicotine products is guilty of a Class III misdemeanor. Any officer, director, or manager having charge or control, either separately or jointly with others, of the business of any corporation which violates sections 28-1419, 28-1420 to 28-1429, and 28-1429.03, if he or she has knowledge of such violation, shall be subject to the penalties provided in this section. In

In addition to the penalties provided in this section, such licensee shall be subject to the additional penalty of a revocation and forfeiture of his, her, their, or its license, at the discretion of the court before whom the complaint for violation of such sections may be heard. If such license is revoked and forfeited, all rights under such license shall at once cease and terminate.

Source: Laws 1919, c. 180, § 6, p. 402; C.S.1922, § 9854; C.S.1929, § 28-1028; R.S.1943, § 28-1027; Laws 1957, c. 100, § 3, p. 360; Laws 1977, LB 40, § 106; R.R.S.1943, § 28-1027, (1975); Laws 2014, LB863, § 19; Laws 2019, LB149, § 8; Laws 2019, LB397, § 8; Laws 2020, LB1064, § 6.

Operative date October 1, 2020.

28-1427 Person misrepresenting age to obtain tobacco, electronic nicotine delivery systems, or alternative nicotine products; penalty.

Except as provided in subsection (2) of section 28-1419, any person under the age of twenty-one years who obtains cigars, tobacco, cigarettes, cigarette material, electronic nicotine delivery systems, or alternative nicotine products from a licensee by representing that he or she is of the age of twenty-one years or over is guilty of a Class V misdemeanor.

Source: Laws 1919, c. 180, § 8, p. 403; C.S.1922, § 9856; C.S.1929, § 28-1030; R.S.1943, § 28-1029; Laws 1947, c. 98, § 1, p. 281; Laws 1977, LB 40, § 107; R.R.S.1943, § 28-1029, (1975); Laws 2014, LB863, § 20; Laws 2019, LB149, § 9; Laws 2019, LB397, § 9; Laws 2020, LB1064, § 7.

Operative date October 1, 2020.

28-1429.01 Vending machines; legislative findings.

The Legislature finds that the incumbent health risks associated with using tobacco products have been scientifically proven. The Legislature further finds that the growing number of young people who start using tobacco products is staggering, and even more abhorrent are the ages at which such use begins. The Legislature has established an age restriction on the use of tobacco products. To ensure that the use of tobacco products among young people is discouraged to the maximum extent possible, it is the intent of the Legislature to ban the use of vending machines and similar devices to dispense tobacco products in facilities, buildings, or areas which are open to the general public within Nebraska.

Source: Laws 1992, LB 130, § 1; Laws 2019, LB149, § 10.

28-1429.02 Vending machines; restrictions on use; violation; penalty; local ordinances; authorized.

(1) Except as provided in subsection (2) of this section, it shall be unlawful to dispense cigarettes, other tobacco products, electronic nicotine delivery systems, or alternative nicotine products from a vending machine or similar device. Any person violating this section is guilty of a Class III misdemeanor. In addition, upon conviction for a second offense, the court shall order a six-month suspension of the offender's license to sell tobacco and electronic nicotine delivery systems, if any, and, upon conviction for a third or subsequent offense, the court shall order the permanent revocation of the offender's license to sell tobacco and electronic nicotine delivery systems, if any.

(2) Cigarettes, other tobacco products, electronic nicotine delivery systems, or alternative nicotine products may be dispensed from a vending machine or similar device when such machine or device is located in an area, office, business, plant, or factory which is not open to the general public or on the licensed premises of any establishment having a license issued under the Nebraska Liquor Control Act for the sale of alcoholic liquor for consumption on the premises when such machine or device is located in the same room in which the alcoholic liquor is dispensed.

(3) Nothing in this section shall be construed to restrict or prohibit a governing body of a city or village from establishing and enforcing ordinances at least as stringent as or more stringent than the provisions of this section.

Source: Laws 1992, LB 130, § 2; Laws 2014, LB863, § 21; Laws 2019, LB149, § 11; Laws 2019, LB397, § 10.

Cross References

Nebraska Liquor Control Act, see section 53-101.

28-1429.03 Self-service display; restrictions on use; violation; penalty.

(1) Except as provided in subsection (2) of this section and section 28-1429.02, it shall be unlawful to sell or distribute cigarettes, cigars, electronic nicotine delivery systems, alternative nicotine products, or tobacco in any form whatever through a self-service display. Any person violating this section is guilty of a Class III misdemeanor. In addition, upon conviction for a second or subsequent offense within a twelve-month period, the court shall order a six-month suspension of the license issued under section 28-1421.

(2) Cigarettes, cigars, electronic nicotine delivery systems, alternative nicotine products, or tobacco in any form whatever may be sold or distributed in a self-service display that is located in a tobacco specialty store or cigar shop as defined in section 53-103.08.

Source: Laws 2014, LB863, § 22; Laws 2015, LB118, § 1; Laws 2019, LB149, § 12; Laws 2019, LB397, § 11.

(k) CHILD PORNOGRAPHY PREVENTION ACT

28-1463.03 Visual depiction of sexually explicit conduct; prohibited acts.

(1) It shall be unlawful for a person to knowingly make, publish, direct, create, provide, or in any manner generate any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers.

(2) It shall be unlawful for a person knowingly to purchase, rent, sell, deliver, distribute, display for sale, advertise, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers.

(3) It shall be unlawful for a person to knowingly employ, force, authorize, induce, or otherwise cause a child to engage in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(4) It shall be unlawful for a parent, stepparent, legal guardian, or any person with custody and control of a child, knowing the content thereof, to consent to

such child engaging in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

Source: Laws 1978, LB 829, § 1; R.S.1943, (1979), § 28-1463; Laws 1985, LB 668, § 3; Laws 2009, LB97, § 18; Laws 2019, LB630, § 5.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-1463.05 Visual depiction of sexually explicit acts related to possession; violation; penalty.

(1) It shall be unlawful for a person to knowingly possess with intent to rent, sell, deliver, distribute, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers.

(2)(a) Any person who is under nineteen years of age at the time he or she violates this section shall be guilty of a Class IIIA felony for each offense.

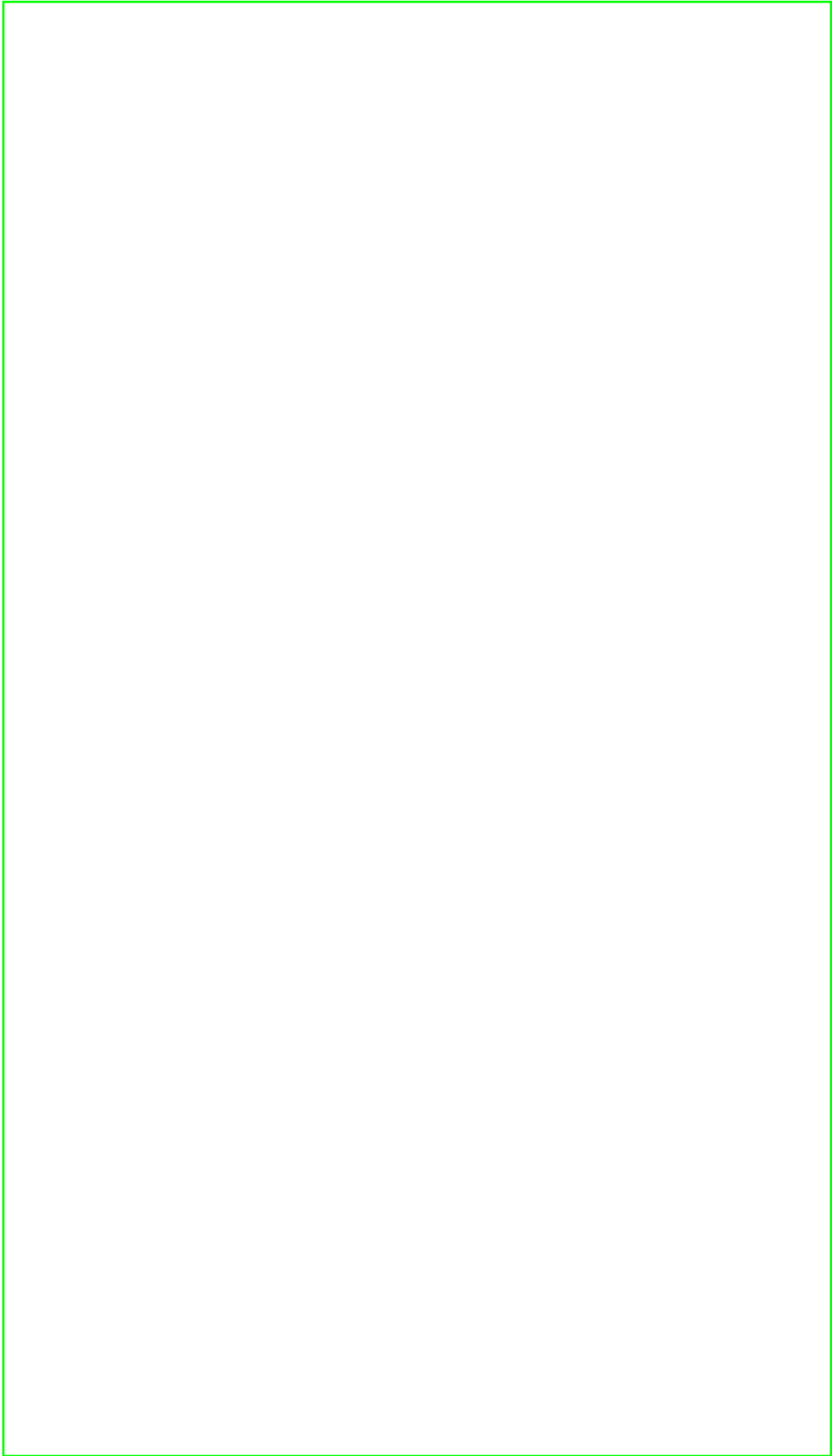
(b) Any person who is nineteen years of age or older at the time he or she violates this section shall be guilty of a Class IIA felony for each offense.

(c) Any person who violates this section and has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-813, 28-833, or 28-1463.03 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.

Source: Laws 1985, LB 668, § 4; Laws 1986, LB 788, § 2; Laws 2004, LB 943, § 7; Laws 2009, LB97, § 20; Laws 2015, LB605, § 58; Laws 2019, LB630, § 6.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.



CRIMINAL PROCEDURE

CHAPTER 29
CRIMINAL PROCEDURE

Article.

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ARTICLE 1

DEFINITIONS AND GENERAL RULES OF PROCEDURE

Section

- 29-110. Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions.
- 29-119. Plea agreement; terms, defined.

29-110 Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions.

(1) Except as otherwise provided by law, no person shall be prosecuted for any felony unless the indictment is found by a grand jury within three years next after the offense has been done or committed or unless a complaint for the same is filed before the magistrate within three years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(2) Except as otherwise provided by law, no person shall be prosecuted, tried, or punished for any misdemeanor or other indictable offense below the grade of felony or for any fine or forfeiture under any penal statute unless the suit, information, or indictment for such offense is instituted or found within one year and six months from the time of committing the offense or incurring the fine or forfeiture or within one year for any offense the punishment of which is restricted by a fine not exceeding one hundred dollars and to imprisonment not exceeding three months.

(3) Except as otherwise provided by law, no person shall be prosecuted for kidnapping under section 28-313, false imprisonment under section 28-314 or 28-315, child abuse under section 28-707, pandering under section 28-802, debauching a minor under section 28-805, or an offense under section 28-813 when the victim is under sixteen years of age at the time of the offense (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

(4) Except as otherwise provided by law, no person shall be prosecuted for a violation of subsection (2) or (3) of section 28-831 (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim's eighteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim's eighteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

(5) Except as otherwise provided by law, no person shall be prosecuted for an offense under section 28-813.01 or 28-1463.05 (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim's eighteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim's eighteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

(6) No person shall be prosecuted for a violation of the Securities Act of Nebraska under section 8-1117 unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or

committed or unless a complaint for such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(7) No person shall be prosecuted for criminal impersonation under section 28-638, identity theft under section 28-639, or identity fraud under section 28-640 unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(8) No person shall be prosecuted for a violation of section 68-1017 if the aggregate value of all funds and other benefits obtained or attempted to be obtained is five hundred dollars or more unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(9) No person shall be prosecuted for knowing and intentional abuse, neglect, or exploitation of a vulnerable adult or senior adult under section 28-386 unless the indictment for such offense is found by a grand jury within six years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within six years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(10) Except as otherwise provided by law, no person shall be prosecuted for an offense under section 28-717 (a) unless the indictment for such offense is found by a grand jury within one year and six months next after the offense has been committed or within one year and six months next after the child reaches the age of majority, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within one year and six months next after the offense has been committed or within one year and six months next after the child reaches the age of majority, whichever is later, and a warrant for the arrest of the defendant has been issued.

(11) There shall not be any time limitations for prosecution or punishment for treason, murder, arson, forgery, sexual assault in the first or second degree under section 28-319 or 28-320, sexual assault of a child in the second or third degree under section 28-320.01, incest under section 28-703, sexual assault of a child in the first degree under section 28-319.01, labor trafficking of a minor or sex trafficking of a minor under subsection (1) of section 28-831, or an offense under section 28-1463.03; nor shall there be any time limitations for prosecution or punishment for sexual assault in the third degree under section 28-320 when the victim is under sixteen years of age at the time of the offense.

(12) The time limitations prescribed in this section shall include all inchoate offenses pursuant to the Nebraska Criminal Code and compounding a felony pursuant to section 28-301.

(13) The time limitations prescribed in this section shall not extend to any person fleeing from justice.

(14) When any suit, information, or indictment for any crime or misdemeanor is limited by any statute to be brought or exhibited within any other time

than is limited by this section, then the suit, information, or indictment shall be brought or exhibited within the time limited by such statute.

(15) If any suit, information, or indictment is quashed or the proceedings set aside or reversed on writ of error, the time during the pendency of such suit, information, or indictment so quashed, set aside, or reversed shall not be reckoned within this statute so as to bar any new suit, information, or indictment for the same offense.

(16) The changes made to this section by Laws 2004, LB 943, shall apply to offenses committed prior to April 16, 2004, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(17) The changes made to this section by Laws 2005, LB 713, shall apply to offenses committed prior to September 4, 2005, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(18) The changes made to this section by Laws 2009, LB 97, and Laws 2006, LB 1199, shall apply to offenses committed prior to May 21, 2009, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(19) The changes made to this section by Laws 2010, LB809, shall apply to offenses committed prior to July 15, 2010, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(20) The changes made to this section by Laws 2016, LB934, shall apply to offenses committed prior to April 19, 2016, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(21) The changes made to this section by Laws 2019, LB519, shall apply to offenses committed prior to September 1, 2019, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

Source: G.S.1873, c. 58, § 256, p. 783; R.S.1913, § 8910; C.S.1922, § 9931; C.S.1929, § 29-110; R.S.1943, § 29-110; Laws 1965, c. 147, § 1, p. 489; Laws 1989, LB 211, § 1; Laws 1990, LB 1246, § 10; Laws 1993, LB 216, § 10; Laws 2004, LB 943, § 8; Laws 2005, LB 713, § 2; Laws 2006, LB 1199, § 10; Laws 2009, LB97, § 21; Laws 2009, LB155, § 17; Laws 2010, LB809, § 1; Laws 2016, LB934, § 10; Laws 2019, LB519, § 13; Laws 2020, LB881, § 13.

Effective date November 14, 2020.

Cross References

Nebraska Criminal Code, see section 28-101.

Securities Act of Nebraska, see section 8-1123.

29-119 Plea agreement; terms, defined.

For purposes of this section and sections 23-1201, 29-120, and 29-2261, unless the context otherwise requires:

(1) A plea agreement means that as a result of a discussion between the defense counsel and the prosecuting attorney:

(a) A charge is to be dismissed or reduced; or

(b) A defendant, if he or she pleads guilty to a charge, may receive less than the maximum penalty permitted by law; and

(2)(a) Victim means a person who has had a personal confrontation with an offender as a result of a homicide under sections 28-302 to 28-306, a first degree assault under section 28-308, a second degree assault under section 28-309, a third degree assault under section 28-310 when the victim is an intimate partner as defined in section 28-323, a first degree false imprisonment under section 28-314, a first degree sexual assault under section 28-319, a sexual assault of a child in the first degree under section 28-319.01, a second or third degree sexual assault under section 28-320, a sexual assault of a child in the second or third degree under section 28-320.01, domestic assault in the first, second, or third degree under section 28-323, or a robbery under section 28-324. Victim also includes a person who has suffered serious bodily injury as defined in section 28-109 as a result of a motor vehicle accident when the driver was charged with a violation of section 60-6,196 or 60-6,197 or with a violation of a city or village ordinance enacted in conformance with either section.

(b) In the case of a homicide, victim means the nearest surviving relative under the law as provided by section 30-2303 but does not include the alleged perpetrator of the homicide.

(c) In the case of a violation of section 28-813.01, 28-1463.03, 28-1463.04, or 28-1463.05, victim means a person who was a child as defined in section 28-1463.02 and a participant or portrayed observer in the visual depiction of sexually explicit conduct which is the subject of the violation and who has been identified and can be reasonably notified.

(d) In the case of a sexual assault of a child, a possession offense of a visual depiction of sexually explicit conduct, or a distribution offense of a visual depiction of sexually explicit conduct, victim means the child victim and the parents, guardians, or duly appointed legal representative of the child victim but does not include the alleged perpetrator of the crime.

(e) Victim also includes a person who was the victim of a theft under section 28-511, 28-512, 28-513, or 28-517 when (i) the value of the thing involved is five thousand dollars or more and (ii) the victim and perpetrator were intimate partners as defined in section 28-323.

(f) Victim also includes a sexual assault victim as defined in section 29-4309.

Source: Laws 1983, LB 78, § 1; Laws 1990, LB 87, § 2; Laws 1993, LB 370, § 10; Laws 1998, LB 309, § 2; Laws 2004, LB 270, § 3; Laws 2006, LB 1199, § 11; Laws 2010, LB728, § 8; Laws 2018, LB160, § 1; Laws 2019, LB125, § 1; Laws 2020, LB43, § 9. Effective date November 14, 2020.

ARTICLE 2

POWERS AND DUTIES OF CERTAIN OFFICERS

Section

29-217. Victim of certain criminal activity; visa; request for assistance; certifying agency or official; powers and duties.

29-217 Victim of certain criminal activity; visa; request for assistance; certifying agency or official; powers and duties.

(1) For purposes of this section:

(a) Certifying agency means a state or local law enforcement agency, prosecutor, or other authority that has responsibility for the investigation or prosecution of qualifying criminal activity, as described in 8 C.F.R. 214.14(a)(2);

(b) Certifying official means the head of the certifying agency or any person in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, as described in 8 C.F.R. 214.14(a)(3);

(c) Form I-914B means Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, of the Department of Homeland Security, United States Citizenship and Immigration Services;

(d) Form I-918B means Form I-918, Supplement B, U Nonimmigrant Status Certification, of the Department of Homeland Security, United States Citizenship and Immigration Services;

(e) Investigation or prosecution has the same meaning as in 8 C.F.R. 214.14;

(f) Law enforcement agency means a state or local law enforcement agency, prosecutor, or other authority that has responsibility for the investigation or prosecution of severe forms of trafficking in persons, as described in 8 C.F.R. 214.11(a);

(g) Qualifying criminal activity has the same meaning as in 8 C.F.R. 214.14;

(h) Victim of qualifying criminal activity has the same meaning as in 8 C.F.R. 214.14;

(i) Victim of a severe form of trafficking in persons has the same meaning as in 8 C.F.R. 214.11; and

(j) All references to federal statutes and regulations refer to such statutes and regulations as they existed on January 1, 2020.

(2)(a) On request from an individual whom a law enforcement agency reasonably believes to be a victim of a severe form of trafficking in persons, for purposes of a nonimmigrant T visa, pursuant to the criteria in 8 U.S.C. 1101(a)(15)(T)(i)(I) and (III), a law enforcement agency, no later than ninety business days after receiving the request:

(i) Shall complete, sign, and return to the individual the Form I-914B; and

(ii) May submit a written request to an appropriate federal law enforcement officer asking such officer to file an application for continued presence pursuant to 22 U.S.C. 7105(c)(3).

(b) If the law enforcement agency determines that an individual does not meet the requirements of the law enforcement agency for completion of a Form I-914B, the law enforcement agency shall, no later than ninety business days after receiving the request, inform the individual of the reason and that the individual may make another request with additional evidence or documentation to satisfy such requirements. The law enforcement agency shall permit the individual to make such additional request.

(3)(a) On request from an individual whom a certifying agency reasonably believes to be a victim of qualifying criminal activity, for purposes of a nonimmigrant U visa, pursuant to the certification criteria in 8 U.S.C. 1101(a)(15)(U)(i)(II) to (IV) and (iii), a certifying official in the certifying agency, no later than ninety business days after receiving the request, shall complete, sign, and return to the individual the Form I-918B.

(b) For purposes of determining helpfulness pursuant to 8 U.S.C. 1101(a)(15)(U)(i)(III), an individual shall be considered helpful if, since the initiation of cooperation, the individual has not unreasonably refused to cooperate or failed to provide information and assistance reasonably requested by law enforcement or the prosecutor.

(c) If the certifying official determines that an individual does not meet the requirements of the certifying agency for completion of a Form I-918B, the certifying official shall, no later than ninety business days after receiving the request, inform the individual of the reason and that the individual may make another request with additional evidence or documentation to satisfy such requirements. The certifying official shall permit the individual to make such additional request.

(4) An investigation, the filing of charges, a prosecution, or a conviction are not required for an individual to request and obtain the signed and completed Form I-914B or Form I-918B from a law enforcement agency or certifying official.

(5) It is the exclusive responsibility of the federal immigration authorities to determine whether a person is eligible for a T or U visa. Completion of a Form I-914B or Form I-918B by a law enforcement agency or certifying official only serves to verify information regarding certain criteria considered by the federal government in granting such visas.

(6) A law enforcement agency, certifying agency, or certifying official has the discretion to revoke, disavow, or withdraw a previous completion of a Form I-914B or Form I-918B at any time after initial completion, as provided in 8 C.F.R. 214.11(d)(3)(ii) and 8 C.F.R. 214.14(h)(2)(i)(A).

(7) A law enforcement agency or certifying agency that receives a request under this section shall maintain an internal record of such request, including whether such request was granted or denied and, if denied, the reasons for such denial. Such record shall be maintained for at least three years from completion or denial of the request.

Source: Laws 2020, LB518, § 1.
Effective date November 14, 2020.

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.

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.

ARTICLE 9

BAIL

Section

29-901. Bail; personal recognizance; appointment of counsel; conditions; pretrial release program; conditions.

29-901.01. Conditions of release; how determined.

29-901 Bail; personal recognizance; appointment of counsel; conditions; pretrial release program; conditions.

(1) Except as provided in subsection (2) of this section, 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.

(2)(a) This subsection applies to any bailable defendant who is charged with one or more Class IIIA, IV, or V misdemeanors or violations of city or county ordinances, except when:

(i) The victim is an intimate partner as defined in section 28-323; or

(ii) The defendant is charged with one or more violations of section 60-6,196 or 60-6,197 or city or village ordinances enacted in conformance with section 60-6,196 or 60-6,197.

(b) Any bailable defendant described in this subsection shall be ordered released from custody pending judgment on his or her personal recognizance or under other conditions of release, other than payment of a bond, unless:

(i) The defendant has previously failed to appear in the instant case or any other case in the previous six months;

(ii) 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 the defendant, victims, witnesses, or other persons; and

(iii) The defendant was arrested pursuant to a warrant.

(3) 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.

(4) If the court requires the defendant to execute an appearance bond requiring the defendant to post money or requires the defendant to execute a bail bond, the court shall appoint counsel for the defendant if the court finds the defendant is financially unable to pay the amount required and is indigent.

(5) 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.

(6) In order to assure compliance with the conditions of release referred to in subsection (3) 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 (3) 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.

(7) 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; Laws 2020, LB881, § 14.
Effective date November 14, 2020.

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.

ARTICLE 10

CUSTODY AND MAINTENANCE OF PRISONERS

Section

29-1007. Custody awaiting trial; deadline; release after hearing.

29-1007 Custody awaiting trial; deadline; release after hearing.

A defendant charged with any offense or offenses shall not be held in custody awaiting trial on such offense or offenses for a period of time longer than the maximum possible sentence of imprisonment authorized for such offense or offenses. On the next judicial day after expiration of such deadline, the defendant shall be released on such defendant's personal recognizance, subject to conditions of release the court may impose after a hearing.

Source: Laws 2020, LB881, § 22.
Effective date November 14, 2020.

ARTICLE 12

DISCHARGE FROM CUSTODY OR RECOGNIZANCE

Section

29-1201. Prisoner held without indictment; discharge or recognizance; when.

29-1201 Prisoner held without indictment; discharge or recognizance; when.

Any person held in jail charged with an indictable offense shall be discharged if he or she is not indicted at the term of court at which he or she is held to answer, unless such person is committed to jail on such charge after the rising and final report of the grand jury for that term, in which case the court may discharge such person, or require such person to enter into recognizance with sufficient security for his or her appearance before such court to answer such charge at the next term. However, such person so held in jail without indictment shall not be discharged if it appears to the satisfaction of the court that the witnesses on the part of the state have been enticed or kept away or are detained and prevented from attending court by sickness or some inevitable accident.

Source: G.S.1873, c. 58, § 389, p. 812; R.S.1913, § 9020; C.S.1922, § 10044; C.S.1929, § 29-1201; R.S.1943, § 29-1201; Laws 2020, LB387, § 41.
Operative date January 1, 2021.

Cross References

Prisoners, disposition of untried charges, see section 29-3801 et seq.

ARTICLE 13

VENUE

Section

29-1302. Change of venue; how effected; costs; payment.

29-1302 Change of venue; how effected; costs; payment.

When the venue is changed, the clerk of the court in which the indictment was found shall file a certification of the case file and costs, which together with the original indictment, shall be transmitted to the clerk of the court to which the venue is changed, and the trial shall be conducted in all respects as if the offender had been indicted in the county to which the venue has been changed. All costs, fees, charges, and expenses accruing from a change of venue, together with all costs, fees, charges, and expenses made or incurred in the trial of, or in keeping, guarding, and maintaining the accused shall be paid by the county in which the indictment was found. The clerk of the trial court

shall make a statement of such costs, fees, charges, and expenses and certify and transmit the same to the clerk of the district court where the indictment was found, to be entered upon the register of actions and collected and paid as if a change of venue had not been had.

Source: G.S.1873, c. 58, § 456, p. 824; Laws 1883, c. 84, § 1, p. 329; Laws 1887, c. 109, § 1, p. 667; R.S.1913, § 9025; C.S.1922, § 10049; C.S.1929, § 29-1302; R.S.1943, § 29-1302; Laws 1978, LB 562, § 2; Laws 2018, LB193, § 50.

ARTICLE 14

GRAND JURY

Section

- 29-1406. Judge; charge to jury; instruction as to powers and duties.
 29-1407.01. Grand jury proceedings; reporter; duties; transcript; exhibits; statements; availability.
 29-1414. Disclosure of indictment; when prohibited.
 29-1418. Indictments; presentation; filing; finding of probable cause; dismissal; motions.

29-1406 Judge; charge to jury; instruction as to powers and duties.

(1) The grand jury, after being sworn, shall be charged as to their duty by the judge, who shall call their attention particularly to the obligation of secrecy which their oaths impose, and to such offenses as he or she is by law required to specially charge.

(2) Upon impanelment of each grand jury, the court shall give to such grand jury adequate and reasonable written notice of and shall assure that the grand jury reasonably understands the nature of:

(a) Its duty to inquire into offenses against the criminal laws of the State of Nebraska alleged to have been committed or, in the case of a grand jury impaneled pursuant to subsection (4) of section 29-1401, its duty to inquire into offenses against the criminal laws of the State of Nebraska regarding the death of a person who has died while being apprehended or while in the custody of a law enforcement officer or detention personnel;

(b) Its right to call and interrogate witnesses;

(c) Its right to request the production of documents or other evidence;

(d) The subject matter of the investigation and the criminal statutes or other statutes involved, if these are known at the time the grand jury is impaneled;

(e) The duty of the grand jury by an affirmative vote of twelve or more members of the grand jury to determine, based on the evidence presented before it, whether or not there is probable cause for finding indictments and to determine the violations to be included in any such indictments;

(f) The requirement that the grand jury may not return an indictment in cases of perjury unless at least two witnesses to the same fact present evidence establishing probable cause to return such an indictment; and

(g) In the case of a grand jury impaneled pursuant to subsection (4) of section 29-1401, if the grand jury returns a no true bill:

(i) The grand jury shall create a grand jury report with the assistance of the prosecuting attorney. The grand jury report shall briefly provide an explanation of the grand jury's findings and any recommendations the grand jury deter-

mines to be appropriate based upon the grand jury's investigation and deliberations; and

(ii) The no true bill and the grand jury report shall be filed with the court, where they shall be available for public review, along with the grand jury transcript provided for in subsection (3) of section 29-1407.01.

Source: G.S.1873, c. 58, § 397, p. 814; R.S.1913, § 9036; C.S.1922, § 10060; C.S.1929, § 29-1406; R.S.1943, § 29-1406; Laws 1979, LB 524, § 1; Laws 2016, LB1000, § 7; Laws 2020, LB881, § 15. Effective date November 14, 2020.

29-1407.01 Grand jury proceedings; reporter; duties; transcript; exhibits; statements; availability.

(1) A certified or authorized reporter shall be present at all grand jury sessions. All grand jury proceedings and testimony from commencement to adjournment shall be reported. Except as otherwise provided in this section, no copies of transcripts of, or exhibits from, such proceedings shall be made available.

(2) Except as provided in subsection (3) of this section:

(a) The reporter's stenography notes and tape recordings shall be preserved and sealed and any transcripts which may be prepared shall be preserved, sealed, and filed with the court;

(b) No release or destruction of the notes or transcripts shall occur without prior court approval; and

(c) No copies of such transcript or exhibits shall be made available.

(3)(a) This subsection applies to a grand jury impaneled pursuant to subsection (4) of section 29-1401.

(b) A transcript, including any exhibits of the grand jury proceedings, and a copy of such transcript and copies of such exhibits shall be prepared at court expense and shall be filed with the court. Such transcript shall not include the names of grand jurors or their deliberations.

(c) If the grand jury returns a no true bill, a copy of the transcript, including a copy of any exhibits, shall be available for public review upon written request to the clerk of the district court. Such review shall be made at a reasonable time set by the clerk of the district court. Except as otherwise provided in this subdivision, no copies of such transcript or exhibits shall be made available.

(d)(i) If the grand jury returns a true bill, once a trial court is assigned and the criminal case docketed, any of the parties to the criminal case, within five days of the criminal case being docketed, may file a motion for a protective order requesting a hearing before the trial court to request a delay of the public review of the transcript, including any exhibits, of the grand jury proceedings. Except as otherwise provided in this subdivision, no copies of such transcript or exhibits shall be made available.

(ii) If after a hearing the trial court grants the request for a protective order, then any public review of the transcript, including any exhibits, of the grand jury proceedings shall not take place until the conclusion of the criminal prosecution. Conclusion of the criminal prosecution means an acquittal, a dismissal, or, if there is a conviction, when the direct appeal process has concluded. Once the criminal prosecution has concluded, a copy of the tran-

script, including a copy of any exhibits, shall be available for public review upon written request to the clerk of the district court. Such review shall be made at a reasonable time set by the clerk of the district court. Except as otherwise provided in this subdivision, no copies of such transcript or exhibits shall be made available.

(iii) If after a hearing the trial court denies the request for a protective order, then a copy of the transcript, including a copy of any exhibits, shall be available for public review once the trial court's order is filed and upon written request to the clerk of the district court. Such review shall be made at a reasonable time set by the clerk of the district court. Except as otherwise provided in this subdivision, no copies of such transcript or exhibits shall be made available.

(iv) If no party to the criminal case files a motion for a protective order within the time provided in subdivision (3)(d)(i) of this section, then a copy of the transcript, including a copy of any exhibits, shall be available for public review upon written request to the clerk of the district court. Such review shall be made at a reasonable time set by the clerk of the district court. Except as otherwise provided in this subdivision, no copies of such transcript or exhibits shall be made available.

(4) Upon application by the prosecutor or by any witness after notice to the prosecutor, the court, for good cause, may enter an order to furnish to that witness a transcript of his or her own grand jury testimony or exhibits relating thereto.

(5) Any witness summoned to testify before a grand jury, or an attorney for such witness with the witness's written approval, shall be entitled, prior to testifying, to examine and copy at the witness's expense any statement in the possession of the prosecuting attorney or the grand jury which such witness has made that relates to the subject matter under inquiry by the grand jury. If a witness is proceeding in forma pauperis, he or she shall be furnished, upon request, a copy of such transcript and shall not pay a fee.

Source: Laws 1979, LB 524, § 3; Laws 2016, LB1000, § 8; Laws 2018, LB193, § 51; Laws 2020, LB881, § 16.
Effective date November 14, 2020.

29-1414 Disclosure of indictment; when prohibited.

No grand juror or officer of the court shall disclose that an indictment has been found against any person not in custody or under bail, except by the issuing of process, until the indictment is filed.

Source: G.S.1873, c. 58, § 406, p. 815; R.S.1913, § 9044; C.S.1922, § 10068; C.S.1929, § 29-1414; R.S.1943, § 29-1414; Laws 2018, LB193, § 52.

29-1418 Indictments; presentation; filing; finding of probable cause; dismissal; motions.

(1) Indictments returned by a grand jury shall be presented by their foreman to the court and shall be filed with the clerk, who shall endorse thereon the day of their filing and shall enter each case upon the register of actions and the date when the parties indicted have been arrested.

(2) Any grand jury may indict a person for an offense when the evidence before such grand jury provides probable cause to believe that such person committed such offense.

(3) The district court before which the indicted defendant is to be tried shall dismiss any indictment of the grand jury if such district court finds, upon the filing of a motion by the indicted defendant based upon the grand jury record without argument or further evidence, that the grand jury finding of probable cause is not supported by the record.

(4) Any other motions testing the validity of the indictment may be heard by the court based only on the record and argument of counsel, unless there is cause shown for the need for additional evidence.

Source: G.S.1873, c. 58, § 410, p. 816; R.S.1913, § 9048; C.S.1922, § 10072; C.S.1929, § 29-1418; R.S.1943, § 29-1418; Laws 1979, LB 524, § 10; Laws 2018, LB193, § 53.

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 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 17

ARREST AND ITS INCIDENTS AFTER INDICTMENT

Section

29-1705. Felonies; recognizance ordered by court; authority.

29-1705 Felonies; recognizance ordered by court; authority.

When any person has been indicted for a felony and the person so indicted has not been arrested or recognized to appear before the court, the court may make an entry of the cause upon the record and may order the amount in which the party indicted may be recognized for his or her appearance by any officer charged with the duty of arresting him or her.

Source: G.S.1873, c. 58, § 430, p. 820; R.S.1913, § 9074; C.S.1922, § 10098; C.S.1929, § 29-1705; R.S.1943, § 29-1705; Laws 2018, LB193, § 54.

ARTICLE 18

MOTIONS AND ISSUES ON INDICTMENT

Section

29-1802. Indictment; record; service of copy on defendant; arraignment, when had.

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.

29-1816.01. Arraignment of accused; record of proceedings; filing; evidence.

29-1822. Mental incompetency of accused after crime commission; effect; death penalty; stay of execution.

29-1823. Mental incompetency of defendant before or during trial; determination by judge; effect; costs; hearing; commitment proceeding; treatment; department; duties; motion to discharge; considerations.

29-1824. Competency restoration treatment; network of contract facilities and providers; department; powers.

29-1802 Indictment; record; service of copy on defendant; arraignment, when had.

The clerk of the district court shall, upon the filing of any indictment with him or her and after the person indicted is in custody or let to bail, cause the same to be entered on the record of the court, and in case of the loss of the original, such record or a certified copy thereof shall be used in place thereof upon the trial of the cause. Within twenty-four hours after the filing of an indictment for felony, and in every other case on request, the clerk shall make and deliver to the sheriff and the defendant or his or her counsel a copy of the indictment, and the sheriff on receiving such copy shall serve the same upon the defendant. No one shall be, without his or her assent, arraigned or called on to answer to any indictment until one day has elapsed after receiving in person or by counsel or having an opportunity to receive a copy of such indictment.

Source: G.S.1873, c. 58, § 436, p. 821; Laws 1877, § 1, p. 4; R.S.1913, § 9080; C.S.1922, § 10104; C.S.1929, § 29-1802; R.S.1943, § 29-1802; Laws 2018, LB193, § 55.

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.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

29-1816.01 Arraignment of accused; record of proceedings; filing; evidence.

On the arraignment in the district court of any person accused of a felony, the court may require the official reporter of the court to make a record of the proceedings in such court incident to such arraignment and the disposition of the charge made against the accused including sentence in the event of conviction. The court may further require the court reporter to prepare a transcript of the report of such proceedings, authenticate the transcript with an appropriate certificate to be attached thereto, and cause the same to be filed in the office of the clerk of the court. Such transcript shall be kept in a special file and not removed from the office of the clerk of the district court, except on an order of a judge of the court expressly authorizing removal. In the event that the transcript is so made, authenticated and filed, it, or a duly certified copy

thereof, shall become and be competent and lawful evidence and admissible as such in any of the courts of this state.

Source: Laws 1947, c. 103, § 1(2), p. 292; Laws 2018, LB193, § 56.

29-1822 Mental incompetency of accused after crime commission; effect; death penalty; stay of execution.

(1) A person who becomes mentally incompetent after the commission of an offense shall not be tried for the offense until such disability is removed as provided in section 29-1823.

(2) If, after a verdict of guilty, but before judgment is pronounced, a defendant becomes mentally incompetent, then no judgment shall be given until such disability is removed.

(3) If a defendant is sentenced to death and, after judgment, but before execution of the sentence, such person becomes mentally incompetent, execution of the sentence shall be stayed until such disability is removed.

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; Laws 2020, LB881, § 17.

Effective date November 14, 2020.

29-1823 Mental incompetency of defendant before or during trial; determination by judge; effect; costs; hearing; commitment proceeding; treatment; department; duties; motion to discharge; considerations.

(1) If at any time prior to or during trial it appears that the defendant 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 defendant, or by any person for the defendant. The judge of the district or county court of the county where the defendant is to be tried shall have the authority to determine whether or not the defendant is competent to stand trial. The judge may also cause such medical, psychiatric, or psychological examination of the defendant 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 defendant is mentally incompetent to stand trial and that there is a substantial probability that the defendant will become competent within the reasonably foreseeable future, the judge shall order the defendant to be committed to the Department of Health and Human Services to provide appropriate treatment to restore competency. This may include commitment to a state hospital for the mentally ill, another appropriate state-owned or state-operated facility, or a contract facility or provider pursuant to an alternative treatment plan proposed by the department and approved by the court under subsection (2) of this section until such time as the disability may be removed.

(2)(a) If the department determines that treatment by a contract facility or provider is appropriate, the department shall file a report outlining its determination and such alternative treatment plan with the court. Within twenty-one

days after the filing of such report, the court shall hold a hearing to determine whether such treatment is appropriate. The court may approve or deny such alternative treatment plan.

(b) A defendant shall not be eligible for treatment by a contract facility or provider under this subsection if the judge determines that the public's safety would be at risk.

(3) Within sixty days after entry of the order committing the defendant to the department, and every sixty days thereafter until either the disability is removed or other disposition of the defendant has been made, the court shall hold a hearing to determine (a) whether the defendant is competent to stand trial or (b) whether or not there is a substantial probability that the defendant will become competent within the reasonably foreseeable future.

(4) If it is determined that there is not a substantial probability that the defendant will become competent within the reasonably 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 defendant. If during the period of time between the sixty-day review hearings set forth in subsection (3) of this section it is the opinion of the department that the defendant is competent to stand trial, the department shall file a report outlining its opinion with the court and within seven days after such report being filed the court shall hold a hearing to determine whether or not the defendant is competent to stand trial. The state shall pay the cost of maintenance and care of the defendant during the period of time ordered by the court for treatment to remove the disability.

(5) The defendant, by and through counsel, may move to be discharged from the offenses charged in the complaint or information for the reason that there is not a substantial probability that the defendant will become competent within the reasonably foreseeable future.

(6) In determining whether there is a substantial probability that a defendant will become competent in the reasonably foreseeable future, the court shall take into consideration the likely length of any sentence that would be imposed upon the defendant. If the court discharges the defendant, the court shall state whether such discharge is with or without prejudice.

Source: Laws 1967, c. 174, § 1, p. 489; Laws 1997, LB 485, § 1; Laws 2017, LB259, § 4; Laws 2019, LB686, § 5; Laws 2020, LB881, § 18.

Effective date November 14, 2020.

Cross References

Attendance of witnesses, right of accused to compel, see Article I, section 11, Constitution of Nebraska.

29-1824 Competency restoration treatment; network of contract facilities and providers; department; powers.

The Department of Health and Human Services may establish a network of contract facilities and providers to provide competency restoration treatment pursuant to alternative treatment plans under section 29-1823. The department may create criteria for participation in such network and establish training in

competency restoration treatment for participating contract facilities and providers.

Source: Laws 2020, LB881, § 19.
Effective date November 14, 2020.

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.

(c) DISCOVERY

29-1912. Request by defendant to inspect and make copies of evidence; granted; when; findings; possibility of harm; effect.

29-1914. Discovery order; limitation.

29-1916. Discovery order; reciprocity to prosecution; waiver of privilege of self-incrimination.

29-1917. Deposition of witness or sexual assault victim; when; procedure; use at trial.

29-1918. Discovery of additional evidence; notify other party and court.

29-1919. Discovery; failure to comply; effect.

29-1923. Additional statement of defendant or name of eyewitness; prosecutor; notification required; failure to comply; effect.

29-1924. Statement, defined.

29-1926. Child victim or child witness; video deposition and in camera testimony; conditions; use; findings by court; release; procedure; violation; penalty.

(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.

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.

(c) DISCOVERY

29-1912 Request by defendant to inspect and make copies of evidence; granted; when; findings; possibility of harm; effect.

(1) When a defendant is charged with a felony or when a defendant is charged with a misdemeanor or a violation of a city or village ordinance for which imprisonment is a possible penalty, he or she may request the court where the case is to be tried, at any time after the filing of the indictment, information, or complaint, to order the prosecuting attorney to permit the defendant to inspect and copy or photograph:

(a) The defendant's statement, if any. For purposes of this subdivision, statement includes any of the following which relate to the investigation of the underlying charge or charges in the case and which were developed or received by law enforcement agencies:

- (i) Written or recorded statements;
- (ii) Written summaries of oral statements; and
- (iii) The substance of oral statements;

(b) The defendant's prior criminal record, if any;

(c) The defendant's recorded testimony before a grand jury;

(d) The names and addresses of witnesses on whose evidence the charge is based;

(e) The results and reports, in any form, of physical or mental examinations, and of scientific tests, or experiments made in connection with the particular case, or copies thereof;

(f) Documents, papers, books, accounts, letters, photographs, objects, or other tangible things of whatsoever kind or nature which could be used as evidence by the prosecuting authority; and

(g) Reports developed or received by law enforcement agencies when such reports directly relate to the investigation of the underlying charge or charges in the case.

(2) The court may issue such an order pursuant to the provisions of this section. In the exercise of its judicial discretion, the court shall consider, among other things, whether:

(a) The request is material to the preparation of the defense;

(b) The request is not made primarily for the purpose of harassing the prosecution or its witnesses;

(c) The request, if granted, would not unreasonably delay the trial of the offense and an earlier request by the defendant could not have reasonably been made;

(d) There is no substantial likelihood that the request, if granted, would preclude a just determination of the issues at the trial of the offense; or

(e) The request, if granted, would not result in the possibility of bodily harm to, or coercion of, witnesses.

(3) Whenever the court refuses to grant an order pursuant to the provisions of this section, it shall render its findings in writing together with the facts upon which the findings are based.

(4) Whenever the prosecuting attorney believes that the granting of an order under the provisions of this section will result in the possibility of bodily harm to witnesses or that witnesses will be coerced, the court may permit him or her to make such a showing in the form of a written statement to be inspected by the court alone. The statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal by the defendant.

(5) This section does not apply to jailhouse informants as defined in section 29-4701. Sections 29-4701 to 29-4706 govern jailhouse informants.

Source: Laws 1969, c. 235, § 1, p. 867; Laws 1983, LB 110, § 1; Laws 2009, LB63, § 25; Laws 2010, LB771, § 17; Laws 2019, LB352, § 7; Laws 2019, LB496, § 4.

29-1914 Discovery order; limitation.

Whenever an order is issued pursuant to the provisions of section 29-1912 or 29-1913, it shall be limited to items or information that:

(1) Directly relate to the investigation of the underlying charge or charges in the case;

(2) Are within the possession, custody, or control of the state or local subdivisions of government; and

(3) Are known to exist by the prosecution or that, by the exercise of due diligence, may become known to the prosecution.

Source: Laws 1969, c. 235, § 3, p. 869; Laws 2019, LB496, § 5.

29-1916 Discovery order; reciprocity to prosecution; waiver of privilege of self-incrimination.

(1) Whenever the court issues an order pursuant to the provisions of sections 29-1912 and 29-1913, the court may condition its order by requiring the defendant to grant the prosecution like access to comparable items or information included within the defendant's request which:

(a) Are in the possession, custody, or control of the defendant;

(b) The defendant intends to produce at the trial; and

(c) Are material to the preparation of the prosecution's case.

(2) Whenever a defendant is granted an order under sections 29-1912 to 29-1921, the defendant shall be deemed to have waived the privilege of self-incrimination for the purposes of the operation of this section.

Source: Laws 1969, c. 235, § 5, p. 869; Laws 2019, LB496, § 6.

29-1917 Deposition of witness or sexual assault victim; when; procedure; use at trial.

(1) Except as provided in section 29-1926, at any time after the filing of an indictment or information in a felony prosecution, the prosecuting attorney or the defendant may request the court to allow the taking of a deposition of any person other than the defendant who may be a witness in the trial of the offense. The court may order the taking of the deposition when it finds the testimony of the witness:

(a) May be material or relevant to the issue to be determined at the trial of the offense; or

(b) May be of assistance to the parties in the preparation of their respective cases.

(2) An order granting the taking of a deposition shall include the time and place for taking such deposition and such other conditions as the court determines to be just.

(3) Except as provided in subsection (4) of this section, the proceedings in taking the deposition of a witness pursuant to this section and returning it to the court shall be governed in all respects as the taking of depositions in civil cases, including section 25-1223.

(4)(a) A sexual assault victim may request to have an advocate of the victim's choosing present during a deposition under this section. The prosecuting attorney shall inform the victim that the victim may make such request as soon as reasonably practicable prior to the deposition. If the victim wishes to have an advocate present, the victim shall, if reasonably practicable, inform the prosecuting attorney if an advocate will be present, and, if known, the advocate's identity and contact information. If so informed by the victim, the prosecuting attorney shall notify the defendant as soon as reasonably practicable.

(b) An advocate present at a deposition under this section shall not interfere with the deposition or provide legal advice.

(c) For purposes of this subsection, the terms sexual assault victim, victim, and advocate have the same meanings as in section 29-4309.

(5) A deposition taken pursuant to this section may be used at the trial by any party solely for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

Source: Laws 1969, c. 235, § 6, p. 870; Laws 1988, LB 90, § 2; Laws 1993, LB 178, § 1; Laws 2011, LB667, § 6; Laws 2019, LB496, § 7; Laws 2020, LB43, § 10.
Effective date November 14, 2020.

Cross References

Child victim or child witness, use of videotape deposition, see section 29-1926.

29-1918 Discovery of additional evidence; notify other party and court.

If, subsequent to compliance with an order for discovery under the provisions of sections 29-1912 to 29-1921, and prior to or during trial, a party discovers additional material which the party would have been under a duty to disclose or produce at the time of such previous compliance, the party shall promptly notify the other party or the other party's attorney and the court of the

existence of the additional material. Such notice shall be given at the time of the discovery of such additional material.

Source: Laws 1969, c. 235, § 7, p. 870; Laws 2019, LB496, § 8.

29-1919 Discovery; failure to comply; effect.

If, at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with sections 29-1912 to 29-1921 or an order issued pursuant to sections 29-1912 to 29-1921, the court may:

- (1) Order such party to permit the discovery or inspection of materials not previously disclosed;
- (2) Grant a continuance;
- (3) Prohibit the party from calling a witness not disclosed or introducing in evidence the material not disclosed; or
- (4) Enter such other order as it deems just under the circumstances.

Source: Laws 1969, c. 235, § 8, p. 870; Laws 2019, LB496, § 9.

29-1923 Additional statement of defendant or name of eyewitness; prosecutor; notification required; failure to comply; effect.

If, subsequent to compliance with an order issued pursuant to section 29-1922, and prior to or during trial, the prosecuting authority discovers any additional statement made by the defendant or the name of any eyewitness who has identified the defendant at a lineup or showup previously requested or ordered which is subject to discovery or inspection under section 29-1922, he or she shall promptly notify the defendant or his or her attorney or the court of the existence of this additional material. Such notice shall be given at the time of the discovery of such additional material. If at any time during the course of the proceedings it is brought to the attention of the court that the prosecuting authority has failed to comply with this section or with an order issued pursuant to section 29-1922, the court may order the prosecuting authority to permit the discovery or inspection of materials or witnesses not previously disclosed, grant a continuance, or prohibit the prosecuting authority from introducing in evidence the material or the testimony of the witness or witnesses not disclosed, or it may enter such other order as it deems just under the circumstances.

Source: Laws 1969, c. 230, § 2, p. 857; Laws 1983, LB 110, § 4; Laws 2019, LB496, § 10.

29-1924 Statement, defined.

For purposes of sections 29-1922 and 29-1923, statement made by the defendant includes any of the following statements made by the defendant which relate to the investigation of the underlying charge or charges in the case and which were developed or received by law enforcement agencies:

- (1) Written or recorded statements;
- (2) Written summaries of oral statements; and
- (3) The substance of oral statements.

Source: Laws 1969, c. 230, § 3, p. 858; Laws 1983, LB 110, § 5; Laws 2019, LB496, § 11.

29-1926 Child victim or child witness; video deposition and in camera testimony; conditions; use; findings by court; release; procedure; violation; penalty.

(1)(a) Upon request of the prosecuting or defense attorney and upon a showing of compelling need, the court shall order the taking of a video deposition of a child victim of or child witness to any offense punishable as a felony. The deposition ordinarily shall be in lieu of courtroom or in camera testimony by the child. If the court orders a video deposition, the court shall:

(i) Designate the time and place for taking the deposition. The deposition may be conducted in the courtroom, the judge's chambers, or any other location suitable for video recording;

(ii) Assure adequate time for the defense attorney to complete discovery before taking the deposition; and

(iii) Preside over the taking of the video deposition in the same manner as if the child were called as a witness for the prosecution during the course of the trial.

(b) Unless otherwise required by the court, the deposition shall be conducted in the presence of the prosecuting attorney, the defense attorney, the defendant, and any other person deemed necessary by the court, including the parent or guardian of the child victim or child witness, an advocate as defined in section 29-4309, or a counselor or other person with whom the child is familiar. Such parent, guardian, advocate, counselor, or other person shall be allowed to sit with or near the child unless the court determines that such person would be disruptive to the child's testimony.

(c) At any time subsequent to the taking of the original video deposition and upon sufficient cause shown, the court shall order the taking of additional video depositions to be admitted at the time of the trial.

(d) If the child testifies at trial in person rather than by video deposition, the taking of the child's testimony may, upon request of the prosecuting attorney and upon a showing of compelling need, be conducted in camera.

(e) Unless otherwise required by the court, the child shall testify in the presence of the prosecuting attorney, the defense attorney, the defendant, and any other person deemed necessary by the court, including the parent or guardian of the child victim or child witness, an advocate as defined in section 29-4309, or a counselor or other person with whom the child is familiar. Such parent, guardian, advocate, counselor, or other person shall be allowed to sit with or near the child unless the court determines that such person would be disruptive to the child's testimony. Unless waived by the defendant, all persons in the room shall be visible on camera except the camera operator.

(f) If deemed necessary to preserve the constitutionality of the child's testimony, the court may direct that during the testimony the child shall at all times be in a position to see the defendant live or on camera.

(g) For purposes of this section, child means a person eleven years of age or younger at the time the motion to take the deposition is made or at the time of the taking of in camera testimony at trial.

(h) Nothing in this section shall restrict the court from conducting the pretrial deposition or in camera proceedings in any manner deemed likely to facilitate and preserve a child's testimony to the fullest extent possible, consistent with the right to confrontation guaranteed in the Sixth Amendment of the

Constitution of the United States and Article I, section 11, of the Nebraska Constitution. In deciding whether there is a compelling need that child testimony accommodation is required by pretrial video deposition, in camera live testimony, in camera video testimony, or any other accommodation, the court shall make particularized findings on the record of:

- (i) The nature of the offense;
- (ii) The significance of the child's testimony to the case;
- (iii) The likelihood of obtaining the child's testimony without modification of trial procedure or with a different modification involving less substantial digression from trial procedure than the modification under consideration;
- (iv) The child's age;
- (v) The child's psychological maturity and understanding; and
- (vi) The nature, degree, and duration of potential injury to the child from testifying.

(i) The court may order an independent examination by a psychologist or psychiatrist if the defense attorney requests the opportunity to rebut the showing of compelling need produced by the prosecuting attorney. Such examination shall be conducted in the child's county of residence.

(j) After a finding of compelling need by the court, neither party may call the child witness to testify as a live witness at the trial before the jury unless that party demonstrates that the compelling need no longer exists.

(k) Nothing in this section shall limit the right of access of the media or the public to open court.

(l) Nothing in this section shall preclude discovery by the defendant as set forth in section 29-1912.

(m) The Supreme Court may adopt and promulgate rules of procedure to administer this section, which rules shall not be in conflict with laws governing such matters.

(2)(a) No custodian of a video recording of a child victim or child witness alleging, explaining, denying, or describing an act of sexual assault pursuant to section 28-319, 28-319.01, or 28-320.01 or child abuse pursuant to section 28-707 as part of an investigation or evaluation of the abuse or assault shall release or use a video recording or copies of a video recording or consent, by commission or omission, to the release or use of a video recording or copies of a video recording to or by any other party without a court order, notwithstanding the fact that the child victim or child witness has consented to the release or use of the video recording or that the release or use is authorized under law, except as provided in section 28-730 or pursuant to an investigation under the Office of Inspector General of Nebraska Child Welfare Act. Any custodian may release or consent to the release or use of a video recording or copies of a video recording to law enforcement agencies or agencies authorized to prosecute such abuse or assault cases on behalf of the state.

(b) The court order may govern the purposes for which the video recording may be used, the reproduction of the video recording, the release of the video recording to other persons, the retention and return of copies of the video recording, and any other requirements reasonably necessary for the protection of the privacy and best interests of the child victim or child witness.

(c)(i) Pursuant to section 29-1912, the defendant described in the video recording may petition the district court in the county where the alleged offense took place or where the custodian of the video recording resides for an order requiring the custodian of the video recording to provide a physical copy to the defendant or the defendant's attorney. Such order shall include a protective order prohibiting further distribution of the video recording without a court order.

(ii) Upon obtaining the copy of the video recording pursuant to subdivision (2)(c)(i) of this section, the defendant or the defendant's attorney may request that the recording be transcribed by filing a motion with the court identifying the court reporter or transcriber and the address or location where the transcription will occur. Upon receipt of such request, the court shall enter an order authorizing the distribution of a copy of the video recording to such reporter or transcriber and requiring the copy of the video recording be returned by the reporter or transcriber upon completion of the transcription. Such order may include a protective order related to the distribution of the video recording or information contained in the video recording, including an order that identifying information of the child victim or child witness be redacted from the transcript prepared pursuant to this subsection. Upon return of such copy, the defendant or the defendant's attorney shall certify to the court and the parties that such copy has been returned.

(iii) After obtaining the copy of the video recording pursuant to subdivision (2)(c)(i) of this section, the defendant or the defendant's attorney may file a motion with the court requesting permission to release such copy to an expert or investigator. If the defendant or the defendant's attorney believes that including the name or identifying information of such expert or investigator will prejudice the defendant, the court shall permit the defendant or the defendant's attorney to include such information in the form of a written statement to be inspected by the court alone. The statement shall be sealed and preserved in the records of the court. Upon granting such motion, the court shall enter an order authorizing the distribution of a copy of the video recording to such expert or investigator and requiring the copy of the video recording be returned by the expert or investigator upon the completion of services of the expert or investigator. The order shall not include the name or identifying information of the expert or investigator. Such order may include a protective order related to the distribution of the video recording or information contained in the video recording. Upon return of such copy, the defendant or the defendant's attorney shall certify to the court and the parties that such copy has been returned. Such certification shall not include the name or identifying information of the expert or the investigator.

(d) Any person who releases or uses a video recording except as provided in this section shall be guilty of a Class I misdemeanor.

Source: Laws 1988, LB 90, § 3; Laws 1997, LB 643, § 1; Laws 2006, LB 1199, § 12; Laws 2015, LB347, § 1; Laws 2020, LB43, § 11; Laws 2020, LB1148, § 8.
Effective date November 14, 2020.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB43, section 11, with LB1148, section 8, to reflect all amendments.

Cross References

Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.

ARTICLE 20

TRIAL

Section

- 29-2001. Trial; presence of accused required; exceptions.
 29-2003. Joint indictment; special venire; when required; how drawn.
 29-2004. Jury; how drawn and selected; alternate jurors.
 29-2005. Peremptory challenges.
 29-2006. Challenges for cause.
 29-2011. Jurors; permitted to take notes; use; destruction.
 29-2011.02. Witnesses; refusal to testify or provide information; court order for testimony or information; limitation on use.
 29-2011.03. Order for testimony or information of witness; request; when.
 29-2017. Jury; view place of occurrence of material fact; restrictions.
 29-2020. Bill of exceptions by defendant; request; procedure; exception in capital cases.
 29-2023. Jury; discharged before verdict; effect; record.
 29-2027. Verdict in trials for murder; conviction by confession; sentencing procedure.

29-2001 Trial; presence of accused required; exceptions.

No person indicted for a felony shall be tried unless personally present during the trial. Persons indicted for a misdemeanor may, at their own request, by leave of the court be put on trial in their absence. The request shall be in writing and entered on the record of the court.

Source: G.S.1873, c. 58, § 464, p. 825; R.S.1913, § 9104; C.S.1922, § 10129; C.S.1929, § 29-2001; R.S.1943, § 29-2001; Laws 2018, LB193, § 57.

29-2003 Joint indictment; special venire; when required; how drawn.

When two or more persons have been charged together in the same indictment or information with a crime, and one or more have demanded a separate trial and had the same, and when the court is satisfied by reason of the same evidence being required in the further trial of parties to the same indictment or information, that the petit jurors from the jury panel and bystanders are incompetent, because of having heard the evidence, to sit in further causes in the same indictment or information, then the court may require the jury commissioner to draw in the same manner as described in section 25-1656 such number of names as the court may direct as a separate jury panel from which a jury may be selected, which panel shall be notified and summoned for the day and hour as ordered by the court. The jurors whose names are so drawn shall be summoned to forthwith appear before the court, and, after having been examined, such as are found qualified and have no lawful excuse for not serving as jurors shall constitute a special venire from which the court shall proceed to have a jury impaneled for the trial of the cause. The court may repeat the exercise of this power until all the parties charged in the same indictment or information have been tried.

Source: Laws 1881, c. 34, § 1, p. 213; R.S.1913, § 9106; C.S.1922, § 10131; C.S.1929, § 29-2003; R.S.1943, § 29-2003; Laws 2020, LB387, § 42.

Operative date January 1, 2021.

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 additional jurors, to be known as alternate jurors.

(3)(a) The court may impanel up to six alternate jurors to replace any jurors who are unable to perform or who are disqualified from performing their duties.

(b) Alternate jurors must have the same qualifications and shall be selected and sworn in the same manner as any other juror.

(c) Unless a party objects, alternate jurors shall replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror has the same authority as the other jurors.

(4) 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.

(5)(a) The court may retain alternate jurors after the jury retires to deliberate, except that 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.

(b) The court shall ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew.

(6)(a) Each party is entitled to the following number of additional peremptory challenges to prospective alternate jurors:

(i) One additional peremptory challenge is permitted when one or two alternates are impaneled;

(ii) Two additional peremptory challenges are permitted when three or four alternates are impaneled; and

(iii) Three additional peremptory challenges are permitted when five or six alternates are impaneled.

(b) The additional peremptory challenges provided in this subsection may only be used to remove alternate jurors.

(7) In construing and applying this section, courts shall consider Federal Rule of Criminal Procedure 24 and case law interpreting such rule.

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; Laws 2020, LB881, § 20.

Effective date November 14, 2020.

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 Jury Selection Act, section 25-1644.

29-2005 Peremptory challenges.

Except as otherwise provided in section 29-2004 for peremptory challenges to alternate jurors:

(1) 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;

(2) 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;

(3) In all other criminal trials, the defendant shall be allowed a peremptory challenge of three jurors; and

(4) 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.

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; Laws 2020, LB881, § 21.
Effective date November 14, 2020.

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.

29-2011 Jurors; permitted to take notes; use; destruction.

Jurors shall be permitted, but not required, to take notes. The notes may be used during the jury's deliberations and shall be treated as confidential between the juror making them and the other jurors. The trial judge shall ensure the confidentiality of the notes during the course of the trial and the jury's deliberations and shall instruct the bailiff to immediately mutilate and destroy such notes upon return of the verdict.

Source: Laws 2008, LB1014, § 72; Laws 2020, LB387, § 43.
Operative date January 1, 2021.

29-2011.02 Witnesses; refusal to testify or provide information; court order for testimony or information; limitation on use.

Whenever a witness refuses, on the basis of the privilege against self-incrimination, to testify or to provide other information in a criminal proceeding or investigation before a court, a grand jury, the Auditor of Public Accounts, the Legislative Council, or a standing committee or a special legislative investigative or oversight committee of the Legislature, the court, on motion of the county attorney, other prosecuting attorney, Auditor of Public Accounts, chairperson of the Executive Board of the Legislative Council, or chairperson of a standing or special committee of the Legislature, may order the witness to testify or to provide other information. The witness may not refuse to comply with such an order of the court on the basis of the privilege against self-incrimination, but no testimony or other information compelled under the court's order or any information directly or indirectly derived from such testimony or other information may be used against the witness in any criminal case except in a prosecution for perjury, giving a false statement, or failing to comply with the order of the court.

Source: Laws 1982, LB 525, § 1; Laws 1990, LB 1246, § 12; Laws 2015, LB539, § 1; Laws 2020, LB681, § 1.
Effective date November 14, 2020.

Cross References

Legislative Council, committee investigations, see sections 50-404 to 50-409.

29-2011.03 Order for testimony or information of witness; request; when.

The county attorney, other prosecuting attorney, Auditor of Public Accounts, or chairperson of the Executive Board of the Legislative Council or chairperson of a standing committee or a special legislative investigative or oversight committee of the Legislature upon an affirmative vote of a majority of the board or committee, may request an order pursuant to section 29-2011.02 when in such person's judgment:

(1) The testimony or other information from such individual may be necessary to the public interest; and

(2) Such individual has refused or is likely to refuse to testify or provide other information on the basis of the privilege against self-incrimination.

Source: Laws 1982, LB 525, § 2; Laws 1990, LB 1246, § 13; Laws 2015, LB539, § 2; Laws 2020, LB681, § 2.
Effective date November 14, 2020.

29-2017 Jury; view place of occurrence of material fact; restrictions.

Whenever in the opinion of the court it is proper for the jury to have a view of the place in which any material fact occurred, it may order them to be conducted in a body, under charge of the bailiff, to the place which shall be shown to them by the bailiff, an individual appointed by the court, or both. While the jury are thus absent, no person other than the bailiff or individual appointed by the court shall speak to them on any subject connected with the trial.

Source: G.S.1873, c. 58, § 479, p. 829; R.S.1913, § 9120; C.S.1922, § 10145; C.S.1929, § 29-2017; R.S.1943, § 29-2017; Laws 2020, LB387, § 44.
Operative date January 1, 2021.

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.

29-2023 Jury; discharged before verdict; effect; record.

In case a jury is discharged on account of sickness of a juror, or other accident or calamity requiring their discharge, or after they have been kept so long together that there is no probability of agreeing, the court shall, upon directing the discharge, order that the reasons for such discharge be entered

upon the record and such discharge shall be without prejudice to the prosecution.

Source: G.S.1873, c. 58, § 485, p. 830; R.S.1913, § 9126; C.S.1922, § 10151; C.S.1929, § 29-2023; R.S.1943, § 29-2023; Laws 2018, LB193, § 58; Laws 2020, LB387, § 45.
Operative date January 1, 2021.

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

- 29-2202. Verdict of guilty; judgment; when pronounced; suspension of sentence; when; bail.
- 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.
- 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

- 29-2246. Terms, defined.
- 29-2252. Probation administrator; duties.
- 29-2259. Probation administrator; office; salaries; expenses; office space; prepare budget; interpreter services.
- 29-2261. Presentence investigation, when; contents; psychiatric examination; persons having access to records; reports authorized.
- 29-2262. Probation; conditions.
- 29-2264. Probation; completion; conviction may be set aside; conditions; retroactive effect.
- 29-2268. Probation; post-release supervision; violation; court; determination.

(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.

Section

(h) DEFERRED JUDGMENT

29-2292. Deferral of entry of judgment of conviction; defendant placed on probation; conditions; factors; new sentence; when.

29-2293. Court order; fees.

29-2294. Final order.

(a) JUDGMENT ON CONVICTION

29-2202 Verdict of guilty; judgment; when pronounced; suspension of sentence; when; bail.

Except as provided in sections 29-2292 to 29-2294, if the defendant has nothing to say, or if he or she shows no good and sufficient cause why judgment should not be pronounced, the court shall proceed to pronounce judgment as provided by law. The court, in its discretion, may for any cause deemed by it good and sufficient, suspend execution of sentence for a period not to exceed ninety days from the date judgment is pronounced. If the defendant is not at liberty under bail, he or she may be admitted to bail during the period of suspension of sentence as provided in section 29-901.

Source: G.S.1873, c. 58, § 496, p. 832; R.S.1913, § 9137; C.S.1922, § 10162; C.S.1929, § 29-2202; R.S.1943, § 29-2202; Laws 1951, c. 87, § 2, p. 251; Laws 2019, LB686, § 6.

Cross References

Bail, conditions, see sections 29-901 to 29-910.

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 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. As an alternative to a lump-sum payment or as an alternative or in conjunction with installment payments, the court or magistrate may, with the consent of the offender, deduct fines 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; Laws 2020, LB881, § 23.
Effective date November 14, 2020.

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.

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.

(c) PROBATION

29-2246 Terms, defined.

For purposes of the Nebraska Probation Administration Act and sections 43-2,123.01 and 83-1,102 to 83-1,104, unless the context otherwise requires:

- (1) Association means the Nebraska District Court Judges Association;
- (2) Court means a district court, county court, or juvenile court as defined in section 43-245;
- (3) Office means the Office of Probation Administration;
- (4) Probation means a sentence under which a person found guilty of a crime upon verdict or plea or adjudicated delinquent or in need of special supervision is released by a court subject to conditions imposed by the court and subject to supervision. Probation includes post-release supervision and supervision ordered by a court pursuant to a deferred judgment under section 29-2292;
- (5) Probationer means a person sentenced to probation or post-release supervision;
- (6) Probation officer means an employee of the system who supervises probationers and conducts presentence, predisposition, or other investigations as may be required by law or directed by a court in which he or she is serving or performs such other duties as authorized pursuant to section 29-2258, except unpaid volunteers from the community;
- (7) Juvenile probation officer means any probation officer who supervises probationers of a separate juvenile court;
- (8) Juvenile intake probation officer means an employee of the system who is called upon by a law enforcement officer in accordance with section 43-250 to make a decision regarding the furtherance of a juvenile's detention;
- (9) Chief probation officer means the probation officer in charge of a probation district;
- (10) System means the Nebraska Probation System;
- (11) Administrator means the probation administrator;
- (12) Non-probation-based program or service means a program or service established within the district, county, or juvenile courts and provided to individuals not sentenced to probation who have been charged with or convicted of a crime for the purpose of diverting the individual from incarceration or to provide treatment for issues related to the individual's criminogenic needs.

Non-probation-based programs or services include, but are not limited to, problem solving courts established pursuant to section 24-1302 and the treatment of problems relating to substance abuse, mental health, sex offenses, or domestic violence;

(13) Post-release supervision means the portion of a split sentence following a period of incarceration under which a person found guilty of a crime upon verdict or plea is released by a court subject to conditions imposed by the court and subject to supervision by the office; and

(14) Rules and regulations means policies and procedures written by the office and approved by the Supreme Court.

Source: Laws 1971, LB 680, § 1; Laws 1972, LB 1051, § 1; Laws 1984, LB 13, § 61; Laws 1986, LB 529, § 32; Laws 2001, LB 451, § 1; Laws 2005, LB 538, § 5; Laws 2008, LB1014, § 18; Laws 2015, LB605, § 63; Laws 2016, LB919, § 3; Laws 2019, LB686, § 7.

29-2252 Probation administrator; duties.

The administrator shall:

- (1) Supervise and administer the office;
- (2) Establish and maintain policies, standards, and procedures for the system, with the concurrence of the Supreme Court;
- (3) Prescribe and furnish such forms for records and reports for the system as shall be deemed necessary for uniformity, efficiency, and statistical accuracy;
- (4) Establish minimum qualifications for employment as a probation officer in this state and establish and maintain such additional qualifications as he or she deems appropriate for appointment to the system. Qualifications for probation officers shall be established in accordance with subsection (4) of section 29-2253. An ex-offender released from a penal complex or a county jail may be appointed to a position of deputy probation or parole officer. Such ex-offender shall maintain a record free of arrests, except for minor traffic violations, for one year immediately preceding his or her appointment;
- (5) Establish and maintain advanced periodic inservice training requirements for the system;
- (6) Cooperate with all agencies, public or private, which are concerned with treatment or welfare of persons on probation;
- (7) Organize and conduct training programs for probation officers. Training shall include the proper use of a risk and needs assessment, risk-based supervision strategies, relationship skills, cognitive behavioral interventions, community-based resources, criminal risk factors, and targeting criminal risk factors to reduce recidivism and the proper use of a matrix of administrative sanctions, custodial sanctions, and rewards developed pursuant to subdivision (18) of this section. All probation officers employed on or after August 30, 2015, shall complete the training requirements set forth in this subdivision;
- (8) Collect, develop, and maintain statistical information concerning probationers, probation practices, and the operation of the system and provide the Community Corrections Division of the Nebraska Commission on Law Enforcement and Criminal Justice with the information needed to compile the report required in section 47-624;

(9) Interpret the probation program to the public with a view toward developing a broad base of public support;

(10) Conduct research for the purpose of evaluating and improving the effectiveness of the system. Subject to the availability of funding, the administrator shall contract with an independent contractor or academic institution for evaluation of existing community corrections facilities and programs operated by the office;

(11) Adopt and promulgate such rules and regulations as may be necessary or proper for the operation of the office or system. The administrator shall adopt and promulgate rules and regulations for transitioning individuals on probation across levels of supervision and discharging them from supervision consistent with evidence-based practices. The rules and regulations shall ensure supervision resources are prioritized for individuals who are high risk to reoffend, require transitioning individuals down levels of supervision intensity based on assessed risk and months of supervision without a reported major violation, and establish incentives for earning discharge from supervision based on compliance;

(12) Transmit a report during each even-numbered year to the Supreme Court on the operation of the office for the preceding two calendar years which shall include a historical analysis of probation officer workload, including participation in non-probation-based programs and services. The report shall be transmitted by the Supreme Court to the Governor and the Clerk of the Legislature. The report submitted to the Clerk of the Legislature shall be submitted electronically;

(13) Administer the payment by the state of all salaries, travel, and expenses authorized under section 29-2259 incident to the conduct and maintenance of the office;

(14) Use the funds provided under section 29-2262.07 to augment operational or personnel costs associated with the development, implementation, and evaluation of enhanced probation-based programs and non-probation-based programs and services in which probation personnel or probation resources are utilized pursuant to an interlocal agreement authorized by subdivision (16) of this section and to purchase services to provide such programs aimed at enhancing adult probationer or non-probation-based program participant supervision in the community and treatment needs of probationers and non-probation-based program participants. Enhanced probation-based programs include, but are not limited to, specialized units of supervision, related equipment purchases and training, and programs that address a probationer's vocational, educational, mental health, behavioral, or substance abuse treatment needs;

(15) Ensure that any risk or needs assessment instrument utilized by the system be periodically validated;

(16) Have the authority to enter into interlocal agreements in which probation resources or probation personnel may be utilized in conjunction with or as part of non-probation-based programs and services. Any such interlocal agreement shall comply with section 29-2255;

(17) Collaborate with the Community Corrections Division of the Nebraska Commission on Law Enforcement and Criminal Justice and the Division of Parole Supervision to develop rules governing the participation of parolees in

community corrections programs operated by the Office of Probation Administration;

(18) Develop a matrix of rewards for compliance and positive behaviors and graduated administrative sanctions and custodial sanctions for use in responding to and deterring substance abuse violations and technical violations. As applicable under sections 29-2266.02 and 29-2266.03, custodial sanctions of up to thirty days in jail shall be designated as the most severe response to a violation in lieu of revocation and custodial sanctions of up to three days in jail shall be designated as the second most severe response;

(19) Adopt and promulgate rules and regulations for the creation of individualized post-release supervision plans, collaboratively with the Department of Correctional Services and county jails, for probationers sentenced to post-release supervision; and

(20) Exercise all powers and perform all duties necessary and proper to carry out his or her responsibilities.

Each member of the Legislature shall receive an electronic copy of the report required by subdivision (12) of this section by making a request for it to the administrator.

Source: Laws 1971, LB 680, § 7; Laws 1973, LB 126, § 2; Laws 1978, LB 625, § 9; Laws 1979, LB 322, § 9; Laws 1979, LB 536, § 6; Laws 1981, LB 545, § 6; Laws 1984, LB 13, § 65; Laws 1986, LB 529, § 37; Laws 1990, LB 663, § 16; Laws 1992, LB 447, § 5; Laws 2003, LB 46, § 5; Laws 2005, LB 538, § 7; Laws 2011, LB390, § 1; Laws 2012, LB782, § 32; Laws 2015, LB605, § 64; Laws 2016, LB1094, § 12; Laws 2018, LB841, § 2; Laws 2020, LB381, § 22.

Operative date January 1, 2021.

29-2259 Probation administrator; office; salaries; expenses; office space; prepare budget; interpreter services.

(1) The salaries and expenses incident to the conduct and maintenance of the office shall be paid by the state. Other expenses shall be paid by the state as provided in sections 81-1174 to 81-1177.

(2) The salaries and travel expenses of the probation service shall be paid by the state. Travel expenses shall be paid as provided in sections 81-1174 to 81-1177.

(3) Except as provided in sections 29-2262 and 29-2262.04, the costs of drug testing and equipment incident to the electronic surveillance of individuals on probation shall be paid by the state.

(4) The expenses incident to the conduct and maintenance of the principal office within each probation district shall in the first instance be paid by the county in which it is located, but such county shall be reimbursed for such expenses by all other counties within the probation district to the extent and in the proportions determined by the Supreme Court based upon population, number of investigations, and probation cases handled or upon such other basis as the Supreme Court deems fair and equitable.

(5) Each county shall provide office space and necessary facilities for probation officers performing their official duties and shall bear the costs incident to maintenance of such offices other than salaries, travel expenses, and data

processing and word processing hardware and software that is provided on the state computer network.

(6) The cost of interpreter services for deaf and hard of hearing persons and for persons unable to communicate the English language shall be paid by the state with money appropriated to the Supreme Court for that purpose or from other funds, including grant money, made available to the Supreme Court for such purpose. Interpreter services shall include auxiliary aids for deaf and hard of hearing persons as defined in section 20-151 and interpreters to assist persons unable to communicate the English language as defined in section 25-2402. Interpreter services shall be provided under this section for the purposes of conducting a presentence investigation and for ongoing supervision by a probation officer of such persons placed on probation.

(7) The probation administrator shall prepare a budget and request for appropriations for the office and shall submit such request to the Supreme Court and with its approval to the appropriate authority in accordance with law.

Source: Laws 1971, LB 680, § 14; Laws 1979, LB 536, § 9; Laws 1981, LB 204, § 43; Laws 1986, LB 529, § 41; Laws 1989, LB 2, § 1; Laws 1990, LB 220, § 5; Laws 1992, LB 1059, § 24; Laws 1999, LB 54, § 4; Laws 2011, LB669, § 23; Laws 2020, LB381, § 23.
Operative date January 1, 2021.

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)(a) 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.

(b) For purposes of this subsection, mental health professional means (i) a practicing physician licensed to practice medicine in this state under the Medicine and Surgery Practice Act, (ii) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111 or as provided under similar provisions of the Psychology Interjurisdictional Compact, or (iii) 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 preponder-

ance 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 Division of Parole Supervision 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; Laws 2018, LB841, § 3; Laws 2018, LB1034, § 3.

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.

29-2262 Probation; conditions.

(1) When a court sentences an offender to probation, it shall attach such reasonable conditions as it deems necessary or likely to insure that the offender will lead a law-abiding life. No offender shall be sentenced to probation if he or she is deemed to be a habitual criminal pursuant to section 29-2221.

(2) The court may, as a condition of a sentence of probation, require the offender:

- (a) To refrain from unlawful conduct;
- (b) To be confined periodically in the county jail or to return to custody after specified hours but not to exceed the lesser of ninety days or the maximum jail term provided by law for the offense;
- (c) To meet his or her family responsibilities;
- (d) To devote himself or herself to a specific employment or occupation;
- (e) To undergo medical or psychiatric treatment and to enter and remain in a specified institution for such purpose;
- (f) To pursue a prescribed secular course of study or vocational training;
- (g) To attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;

(h) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;

(i) To possess no firearm or other dangerous weapon if convicted of a felony, or if convicted of any other offense, to possess no firearm or other dangerous weapon unless granted written permission by the court;

(j) To remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his or her address or his or her employment and to agree to waive extradition if found in another jurisdiction;

(k) To report as directed to the court or a probation officer and to permit the officer to visit his or her home;

(l) To pay a fine in one or more payments as ordered;

(m) To pay for tests to determine the presence of drugs or alcohol, psychological evaluations, offender assessment screens, and rehabilitative services required in the identification, evaluation, and treatment of offenders if such offender has the financial ability to pay for such services;

(n) To perform community service as outlined in sections 29-2277 to 29-2279 under the direction of his or her probation officer;

(o) To be monitored by an electronic surveillance device or system and to pay the cost of such device or system if the offender has the financial ability;

(p) To participate in a community correctional facility or program as provided in the Community Corrections Act;

(q) To satisfy any other conditions reasonably related to the rehabilitation of the offender;

(r) To make restitution as described in sections 29-2280 and 29-2281; or

(s) To pay for all costs imposed by the court, including court costs and the fees imposed pursuant to section 29-2262.06.

(3) When jail time is imposed as a condition of probation under subdivision (2)(b) of this section, the court shall advise the offender on the record the time the offender will serve in jail assuming no good time for which the offender will be eligible under section 47-502 is lost and assuming none of the jail time imposed as a condition of probation is waived by the court.

(4) Jail time may only be imposed as a condition of probation under subdivision (2)(b) of this section if:

(a) The court would otherwise sentence the defendant to a term of imprisonment instead of probation; and

(b) The court makes a finding on the record that, while probation is appropriate, periodic confinement in the county jail as a condition of probation is necessary because a sentence of probation without a period of confinement would depreciate the seriousness of the offender's crime or promote disrespect for law.

(5) In all cases in which the offender is guilty of violating section 28-416, a condition of probation shall be mandatory treatment and counseling as provided by such section.

(6) In all cases in which the offender is guilty of a crime covered by the DNA Identification Information Act, a condition of probation shall be the collecting

of a DNA sample pursuant to the act and the paying of all costs associated with the collection of the DNA sample prior to release from probation.

Source: Laws 1971, LB 680, § 17; Laws 1975, LB 289, § 1; Laws 1978, LB 623, § 29; Laws 1979, LB 292, § 1; Laws 1986, LB 504, § 2; Laws 1986, LB 528, § 4; Laws 1986, LB 956, § 14; Laws 1989, LB 592, § 3; Laws 1989, LB 669, § 1; Laws 1990, LB 220, § 8; Laws 1991, LB 742, § 2; Laws 1993, LB 627, § 2; Laws 1995, LB 371, § 15; Laws 1997, LB 882, § 1; Laws 1998, LB 218, § 16; Laws 2003, LB 46, § 9; Laws 2006, LB 385, § 1; Laws 2010, LB190, § 1; Laws 2015, LB605, § 67; Laws 2016, LB1094, § 17; Laws 2019, LB340, § 1.

Cross References

Community Corrections Act, see section 47-619.

DNA Identification Information Act, see section 29-4101.

29-2264 Probation; completion; conviction may be set aside; conditions; retroactive effect.

(1) Whenever any person is placed on probation by a court and satisfactorily completes the conditions of his or her probation for the entire period or is discharged from probation prior to the termination of the period of probation, the sentencing court shall issue an order releasing the offender from probation. Such order in all felony cases shall provide notice that the person's voting rights are restored two years after completion of probation. The order shall include information on restoring other civil rights through the pardon process, including application to and hearing by the Board of Pardons.

(2) Whenever any person is convicted of an offense and is placed on probation by the court, is sentenced to a fine only, or is sentenced to community service, he or she may, after satisfactory fulfillment of the conditions of probation for the entire period or after discharge from probation prior to the termination of the period of probation and after payment of any fine and completion of any community service, petition the sentencing court to set aside the conviction.

(3)(a) Except as provided in subdivision (3)(b) of this section, whenever any person is convicted of an offense and is sentenced other than as provided in subsection (2) of this section, but is not sentenced to a term of imprisonment of more than one year, such person may, after completion of his or her sentence, petition the sentencing court to set aside the conviction.

(b) A petition under subdivision (3)(a) of this section shall be denied if filed:

(i) By any person with a criminal charge pending in any court in the United States or in any other country;

(ii) During any period in which the person is required to register under the Sex Offender Registration Act;

(iii) For any misdemeanor or felony motor vehicle offense under section 28-306 or the Nebraska Rules of the Road; or

(iv) Within two years after a denial of a petition to set aside a conviction under this subsection.

(4) In determining whether to set aside the conviction, the court shall consider:

(a) The behavior of the offender after sentencing;

(b) The likelihood that the offender will not engage in further criminal activity; and

(c) Any other information the court considers relevant.

(5) The court may grant the offender's petition and issue an order setting aside the conviction when in the opinion of the court the order will be in the best interest of the offender and consistent with the public welfare. The order shall:

(a) Nullify the conviction;

(b) Remove all civil disabilities and disqualifications imposed as a result of the conviction; and

(c) Notify the offender that he or she should consult with an attorney regarding the effect of the order, if any, on the offender's ability to possess a firearm under state or federal law.

(6) The setting aside of a conviction in accordance with the Nebraska Probation Administration Act shall not:

(a) Require the reinstatement of any office, employment, or position which was previously held and lost or forfeited as a result of the conviction;

(b) Preclude proof of a plea of guilty whenever such plea is relevant to the determination of an issue involving the rights or liabilities of someone other than the offender;

(c) Preclude proof of the conviction as evidence of the commission of the offense whenever the fact of its commission is relevant for the purpose of impeaching the offender as a witness, except that the order setting aside the conviction may be introduced in evidence;

(d) Preclude use of the conviction for the purpose of determining sentence on any subsequent conviction of a criminal offense;

(e) Preclude the proof of the conviction as evidence of the commission of the offense in the event an offender is charged with a subsequent offense and the penalty provided by law is increased if the prior conviction is proved;

(f) Preclude the proof of the conviction to determine whether an offender is eligible to have a subsequent conviction set aside in accordance with the Nebraska Probation Administration Act;

(g) Preclude use of the conviction as evidence of commission of the offense for purposes of determining whether an application filed or a license issued under sections 71-1901 to 71-1906.01, the Child Care Licensing Act, or the Children's Residential Facilities and Placing Licensure Act or a certificate issued under sections 79-806 to 79-815 should be denied, suspended, or revoked;

(h) Preclude use of the conviction as evidence of incompetence, neglect of duty, physical, mental, or emotional incapacity, or final conviction of or pleading guilty or nolo contendere to a felony for purposes of determining whether an application filed or a certificate issued under sections 81-1401 to 81-1414.10 should be denied, suspended, or revoked;

(i) Preclude proof of the conviction as evidence whenever the fact of the conviction is relevant to a determination of the registration period under section 29-4005;

(j) Relieve a person who is convicted of an offense for which registration is required under the Sex Offender Registration Act of the duty to register and to comply with the terms of the act;

(k) Preclude use of the conviction for purposes of section 28-1206;

(l) Affect the right of a victim of a crime to prosecute or defend a civil action;

(m) Affect the assessment or accumulation of points under section 60-4,182; or

(n) Affect eligibility for, or obligations relating to, a commercial driver's license.

(7) For purposes of this section, offense means any violation of the criminal laws of this state or any political subdivision of this state including, but not limited to, any felony, misdemeanor, infraction, traffic infraction, violation of a city or village ordinance, or violation of a county resolution.

(8) Except as otherwise provided for the notice in subsection (1) of this section, changes made to this section by Laws 2005, LB 713, shall be retroactive in application and shall apply to all persons, otherwise eligible in accordance with the provisions of this section, whether convicted prior to, on, or subsequent to September 4, 2005.

(9) The changes made to this section by Laws 2018, LB146, and Laws 2020, LB881, shall apply to all persons otherwise eligible under this section, without regard to the date of the conviction sought to be set aside.

Source: Laws 1971, LB 680, § 19; Laws 1993, LB 564, § 1; Laws 1994, LB 677, § 1; Laws 1995, LB 401, § 1; Laws 1997, LB 310, § 1; Laws 1998, Spec. Sess., LB 1, § 3; Laws 2002, LB 1054, § 6; Laws 2003, LB 685, § 2; Laws 2004, LB 1005, § 3; Laws 2005, LB 53, § 3; Laws 2005, LB 713, § 3; Laws 2009, LB285, § 2; Laws 2012, LB817, § 2; Laws 2013, LB265, § 30; Laws 2018, LB146, § 1; Laws 2020, LB881, § 24.

Effective date November 14, 2020.

Cross References

Child Care Licensing Act, see section 71-1908.

Children's Residential Facilities and Placing Licensure Act, see section 71-1924.

Nebraska Rules of the Road, see section 60-601.

Sex Offender Registration Act, see section 29-4001.

29-2268 Probation; post-release supervision; violation; court; determination.

(1) If the court finds that the probationer, other than a probationer serving a term of post-release supervision, did violate a condition of his or her probation, it may revoke the probation and impose on the offender such new sentence as might have been imposed originally for the crime of which he or she was convicted.

(2) If the court finds that a probationer serving a term of post-release supervision did violate a condition of his or her post-release supervision, it may revoke the post-release supervision and impose on the offender a term of imprisonment up to the original period of post-release supervision. If a sentence of incarceration is imposed upon revocation of post-release supervision, the court shall grant jail credit for any days spent in custody as a result of the post-release supervision, including custodial sanctions. The term shall be served in an institution under the jurisdiction of the Department of Correctional Services or in county jail subject to subsection (2) of section 28-105.

(3) If the court finds that the probationer did violate a condition of his or her probation, but is of the opinion that revocation is not appropriate, the court may order that:

- (a) The probationer receive a reprimand and warning;
- (b) Probation supervision and reporting be intensified;
- (c) The probationer be required to conform to one or more additional conditions of probation which may be imposed in accordance with the Nebraska Probation Administration Act;
- (d) A custodial sanction be imposed on a probationer convicted of a felony, subject to the provisions of section 29-2266.03; and
- (e) The probationer's term of probation be extended, subject to the provisions of section 29-2263.

Source: Laws 1971, LB 680, § 23; Laws 2015, LB605, § 70; Laws 2016, LB1094, § 24; Laws 2019, LB686, § 8.

(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.

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.

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.

(h) DEFERRED JUDGMENT**29-2292 Deferral of entry of judgment of conviction; defendant placed on probation; conditions; factors; new sentence; when.**

- (1) Upon a finding of guilt for which a judgment of conviction may be rendered, a defendant may request the court defer the entry of judgment of conviction. Upon such request and after giving the prosecutor and defendant the opportunity to be heard, the court may defer the entry of a judgment of conviction and the imposition of a sentence and place the defendant on probation, upon conditions as the court may require under section 29-2262.
- (2) The court shall not defer judgment under this section if:
 - (a) The offense is a violation of section 42-924;
 - (b) The victim of the offense is an intimate partner as defined in section 28-323;
 - (c) The offense is a violation of section 60-6,196 or 60-6,197 or a city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197; or
 - (d) The defendant is not eligible for probation.
- (3) Whenever a court considers a request to defer judgment, the court shall consider the factors set forth in section 29-2260 and any other information the court deems relevant.
- (4) Except as otherwise provided in this section and sections 29-2293 and 29-2294, the supervision of a defendant on probation pursuant to a deferred judgment shall be governed by the Nebraska Probation Administration Act and sections 29-2270 to 29-2273.
- (5) After a hearing providing the prosecutor and defendant an opportunity to be heard and upon a finding that a defendant has violated a condition of his or her probation, the court may enter any order authorized by section 29-2268 or

pronounce judgment and impose such new sentence as might have been originally imposed for the offense for which the defendant was convicted.

(6) Upon satisfactory completion of the conditions of probation and the payment or waiver of all administrative and programming fees assessed under section 29-2293, the defendant or prosecutor may file a motion to withdraw any plea entered by the defendant and to dismiss the action without entry of judgment.

(7) The provisions of this section apply to offenses committed on or after July 1, 2020. For purposes of this section, an offense shall be deemed to have been committed prior to July 1, 2020, if any element of the offense occurred prior to such date.

Source: Laws 2019, LB686, § 9.

Cross References

Nebraska Probation Administration Act, see section 29-2269.

29-2293 Court order; fees.

Upon entry of a deferred judgment pursuant to section 29-2292, the court shall order the defendant to pay all administrative and programming fees authorized under section 29-2262.06, unless waived under such section. The defendant shall pay any such fees to the clerk of the court. The clerk of the court shall remit all fees so collected to the State Treasurer for credit to the Probation Program Cash Fund.

Source: Laws 2019, LB686, § 10.

29-2294 Final order.

An entry of deferred judgment pursuant to section 29-2292 is a final order as defined in section 25-1902.

Source: Laws 2019, LB686, § 11.

ARTICLE 23

REVIEW OF JUDGMENTS IN CRIMINAL CASES

Section

29-2315.01. Appeal by prosecuting attorney; application; procedure.

29-2315.01 Appeal by prosecuting attorney; application; procedure.

The prosecuting attorney may take exception to any ruling or decision of the court made during the prosecution of a cause by presenting to the trial court the application for leave to file an appeal with reference to the rulings or decisions of which complaint is made. Such application shall contain a copy of the ruling or decision complained of, the basis and reasons for objection thereto, and a statement by the prosecuting attorney as to the part of the record he or she proposes to present to the appellate court. Such application shall be filed with the trial court within twenty days after the final order is entered in the cause, and upon presentation, if the trial court finds it is in conformity with the truth, the judge of the trial court shall sign the same and shall further indicate thereon whether in his or her opinion the part of the record which the prosecuting attorney proposes to present to the appellate court is adequate for a proper consideration of the matter. The prosecuting attorney shall then file

such application with the appellate court within thirty days from the date of the final order. If the application is granted, the prosecuting attorney shall within thirty days from such granting order a bill of exceptions in accordance with section 29-2020 if such bill of exceptions is desired and otherwise proceed to obtain a review of the case as provided in section 25-1912.

Source: Laws 1959, c. 121, § 1, p. 453; Laws 1961, c. 135, § 4, p. 391; Laws 1982, LB 722, § 9; Laws 1987, LB 33, § 5; Laws 1991, LB 732, § 80; Laws 1992, LB 360, § 8; Laws 2003, LB 17, § 11; Laws 2018, LB193, § 59.

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.
 29-2413. Judgments for fines and costs; execution in another county or against real estate; filing of transcript in district court.

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.

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 filing 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; Laws 2018, LB193, § 60.

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.

29-2413 Judgments for fines and costs; execution in another county or against real estate; filing of transcript in district court.

In every case, whenever it is desirable to obtain execution to be issued to another county, or against the lands or real estate of any person against whom a judgment for fine or costs has been rendered by a magistrate, the magistrate may file with the clerk of the district court of the county wherein such magistrate holds office a transcript of the judgment, whereupon such clerk shall enter the cause upon the register of actions and shall file with the clerk of such court a praecipe and execution to be forthwith issued thereon by such clerk and served in all respects as though the judgment had been rendered in the district court of such county.

Source: G.S.1873, c. 58, § 529, p. 839; R.S.1913, § 9200; C.S.1922, § 10207; C.S.1929, § 29-2413; R.S.1943, § 29-2413; Laws 2018, LB193, § 61.

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.

Section

- 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.
 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.

Cross References

Nebraska Evidence Rules, see section 27-1103.

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.

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 27**RECEIPTS AND DISBURSEMENTS OF MONEY IN CRIMINAL CAUSES**

Section

29-2702. Money received; disposition.

29-2702 Money received; disposition.

Every judge or clerk of court, upon receiving any money on account of forfeited recognizances, fines, or costs accruing or due to the county or state, shall pay the same to the treasurer of the proper county, except as may be otherwise expressly provided, within thirty days from the time of receiving the same. When any money is paid to a judge or clerk of court on account of costs

due to individual persons, the same shall be paid to the persons to whom the same are due upon demand.

Source: G.S.1873, c. 58, § 534, p. 840; R.S.1913, § 9238; C.S.1922, § 10267; Laws 1927, c. 62, § 1, p. 223; C.S.1929, § 29-2702; R.S.1943, § 29-2702; Laws 1973, LB 226, § 19; Laws 1988, LB 370, § 8; Laws 2020, LB1028, § 6.
Effective date November 14, 2020.

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 29
CONVICTED SEX OFFENDER

Section

29-2935. Department of Health and Human Services; access to data and information for evaluation; authorized.

29-2935 Department of Health and Human Services; access to data and information for evaluation; authorized.

For purposes of evaluating the treatment process, the Division of Parole Supervision, the Department of Correctional Services, the Board of Parole, and the designated aftercare treatment programs shall allow appropriate access to data and information as requested by the Department of Health and Human Services.

Source: Laws 1992, LB 523, § 14; Laws 1996, LB 645, § 19; Laws 1996, LB 1044, § 88; Laws 2018, LB841, § 4.

ARTICLE 30
POSTCONVICTION PROCEEDINGS

Section

29-3005. Victim of sex trafficking; motion to set aside conviction or adjudication; procedure; court; findings; considerations; hearing; order; effect.

29-3005 Victim of sex trafficking; motion to set aside conviction or adjudication; procedure; court; findings; considerations; hearing; order; effect.

(1) For purposes of this section:

(a) Prostitution-related offense includes:

(i) Prostitution under section 28-801, solicitation of prostitution under section 28-801.01, keeping a place of prostitution under section 28-804, public indecency under section 28-806, or loitering for the purpose of engaging in prostitution or related or similar offenses under local ordinances; and

(ii) Attempt, conspiracy, solicitation, being an accessory to, aiding and abetting, aiding the consummation of, or compounding a felony with any of the offenses in subdivision (1)(a) of this section as the underlying offense;

(b) Trafficker means a person who engages in sex trafficking or sex trafficking of a minor as defined in section 28-830; and

(c) Victim of sex trafficking means a person subjected to sex trafficking or sex trafficking of a minor, as those terms are defined in section 28-830.

(2) At any time following the completion of sentence or disposition, a victim of sex trafficking convicted in county or district court of, or adjudicated in a juvenile court for, (a) a prostitution-related offense committed while the movant was a victim of sex trafficking or proximately caused by the movant's status as a victim of sex trafficking or (b) any other offense committed as a direct result of, or proximately caused by, the movant's status as a victim of sex trafficking, may file a motion to set aside such conviction or adjudication. The motion shall be filed in the county, district, or separate juvenile court of the county in which the movant was convicted or adjudicated.

(3)(a) If the court finds that the movant was a victim of sex trafficking at the time of the prostitution-related offense or finds that the movant's participation

in the prostitution-related offense was proximately caused by the movant's status as a victim of sex trafficking, the court shall grant the motion to set aside a conviction or an adjudication for such prostitution-related offense.

(b) If the court finds that the movant's participation in an offense other than a prostitution-related offense was a direct result of or proximately caused by the movant's status as a victim of sex trafficking, the court shall grant the motion to set aside a conviction or an adjudication for such offense.

(4) Official documentation of a movant's status as a victim of sex trafficking at the time of the prostitution-related offense or other offense shall create a rebuttable presumption that the movant was a victim of sex trafficking at the time of the prostitution-related offense or other offense. Such official documentation shall not be required to obtain relief under this section. Such official documentation includes:

(a) A copy of an official record, certification, or eligibility letter from a federal, state, tribal, or local proceeding, including an approval notice or an enforcement certification generated from a federal immigration proceeding, that shows that the movant is a victim of sex trafficking; or

(b) An affidavit or sworn testimony from an attorney, a member of the clergy, a medical professional, a trained professional staff member of a victim services organization, or other professional from whom the movant has sought legal counsel or other assistance in addressing the trauma associated with being a victim of sex trafficking.

(5) In considering whether the movant is a victim of sex trafficking, the court may consider any other evidence the court determines is of sufficient credibility and probative value, including an affidavit or sworn testimony. Examples of such evidence include, but are not limited to:

(a) Branding or other tattoos on the movant that identified him or her as having a trafficker;

(b) Testimony or affidavits from those with firsthand knowledge of the movant's involvement in the commercial sex trade such as solicitors of commercial sex, family members, hotel workers, and other individuals trafficked by the same individual or group of individuals who trafficked the movant;

(c) Financial records showing profits from the commercial sex trade, such as records of hotel stays, employment at indoor venues such as massage parlors, bottle clubs, or strip clubs, or employment at an escort service;

(d) Internet listings, print advertisements, or business cards used to promote the movant for commercial sex; or

(e) Email, text, or voicemail records between the movant, the trafficker, or solicitors of sex that reveal aspects of the sex trade such as behavior patterns, meeting times, or payments or examples of the trafficker exerting force, fraud, or coercion over the movant.

(6) Upon request of a movant, any hearing relating to the motion shall be conducted in camera. The rules of evidence shall not apply at any hearing relating to the motion.

(7) An order setting aside a conviction or an adjudication under this section shall have the same effect as an order setting aside a conviction as provided in subsections (5) and (6) of section 29-2264.

Source: Laws 2018, LB1132, § 2; Laws 2020, LB881, § 25.
Effective date November 14, 2020.

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 35

CRIMINAL HISTORY INFORMATION

Section

29-3523. Criminal history record information; dissemination; limitations; removal; certain information not part of public record; court; duties; sealed record; effect; expungement.

29-3523 Criminal history record information; dissemination; limitations; removal; certain information not part of public record; court; duties; sealed record; effect; expungement.

(1) After the expiration of the periods described in subsection (3) of this section or after the granting of a motion under subsection (4), (5), or (6) of this section, a criminal justice agency shall respond to a public inquiry in the same manner as if there were no criminal history record information and criminal history record information shall not be disseminated to any person other than a criminal justice agency, except as provided in subsection (2) of this section or when the subject of the record:

(a) Is currently the subject of prosecution or correctional control as the result of a separate arrest;

(b) Is currently an announced candidate for or holder of public office;

(c) Has made a notarized request for the release of such record to a specific person; or

(d) Is kept unidentified, and the record is used for purposes of surveying or summarizing individual or collective law enforcement agency activity or practices, or the dissemination is requested consisting only of release of criminal history record information showing (i) dates of arrests, (ii) reasons for arrests, and (iii) the nature of the dispositions including, but not limited to, reasons for not prosecuting the case or cases.

(2) That part of criminal history record information described in subsection (7) of this section may be disseminated to individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that specifically authorizes access to the information, limits the use of the information to research, evaluative, or statistical activities, and ensures the confidentiality and security of the information.

(3) Except as provided in subsections (1) and (2) of this section, in the case of an arrest, citation in lieu of arrest, or referral for prosecution without citation, all criminal history record information relating to the case shall be removed from the public record as follows:

(a) When no charges are filed as a result of the determination of the prosecuting attorney, the criminal history record information shall not be part of the public record after one year from the date of arrest, citation in lieu of arrest, or referral for prosecution without citation;

(b) When charges are not filed as a result of a completed diversion, the criminal history record information shall not be part of the public record after two years from the date of arrest, citation in lieu of arrest, or referral for prosecution without citation; and

(c) When charges are filed, but the case is dismissed by the court (i) on motion of the prosecuting attorney, (ii) as a result of a hearing not the subject of a pending appeal, (iii) after acquittal, (iv) after a deferred judgment, or (v) after completion of a program prescribed by a drug court or any other problem solving court approved by the Supreme Court, the criminal history record information shall not be part of the public record immediately upon notification of a criminal justice agency after acquittal pursuant to subdivision (3)(c)(iii) of this section or after the entry of an order dismissing the case.

(4) Upon the granting of a motion to set aside a conviction or an adjudication pursuant to section 29-3005, a person who is a victim of sex trafficking, as defined in section 29-3005, may file a motion with the sentencing court for an order to seal the criminal history record information related to such conviction or adjudication. Upon a finding that a court issued an order setting aside such conviction or adjudication pursuant to section 29-3005, the sentencing court shall grant the motion and:

(a) For a conviction, issue an order as provided in subsection (7) of this section; or

(b) For an adjudication, issue an order as provided in section 43-2,108.05.

(5) Any person who has received a pardon may file a motion with the sentencing court for an order to seal the criminal history record information and any cases related to such charges or conviction. Upon a finding that the person received a pardon, the court shall grant the motion and issue an order as provided in subsection (7) of this section.

(6) Any person who is subject to a record which resulted in a case being dismissed prior to January 1, 2017, as described in subdivision (3)(c) of this section, may file a motion with the court in which the case was filed to enter an order pursuant to subsection (7) of this section. Upon a finding that the case was dismissed for any reason described in subdivision (3)(c) of this section, the court shall grant the motion and enter an order as provided in subsection (7) of this section.

(7) Upon acquittal or entry of an order dismissing a case described in subdivision (3)(c) of this section, or after granting a motion under subsection (4), (5), or (6) of this section, the court shall:

(a) Order that all records, including any information or other data concerning any proceedings relating to the case, including the arrest, taking into custody, petition, complaint, indictment, information, trial, hearing, adjudication, correctional supervision, dismissal, or other disposition or sentence, are

not part of the public record and shall not be disseminated to persons other than criminal justice agencies, except as provided in subsection (1) or (2) of this section;

(b) Send notice of the order (i) to the Nebraska Commission on Law Enforcement and Criminal Justice, (ii) to the Nebraska State Patrol, and (iii) to law enforcement agencies, county attorneys, and city attorneys referenced in the court record;

(c) Order all parties notified under subdivision (7)(b) of this section to seal all records pertaining to the case; and

(d) If the case was transferred from one court to another, send notice of the order to seal the record to the transferring court.

(8) In any application for employment, bonding, license, education, or other right or privilege, any appearance as a witness, or any other public inquiry, a person cannot be questioned with respect to any offense for which the record is sealed. If an inquiry is made in violation of this subsection, the person may respond as if the offense never occurred.

(9) Any person arrested due to the error of a law enforcement agency may file a petition with the district court for an order to expunge the criminal history record information related to such error. The petition shall be filed in the district court of the county in which the petitioner was arrested. The county attorney shall be named as the respondent and shall be served with a copy of the petition. The court may grant the petition and issue an order to expunge such information if the petitioner shows by clear and convincing evidence that the arrest was due to error by the arresting law enforcement agency.

(10) The changes made by Laws 2018, LB1132, to the relief set forth in this section shall apply to all persons otherwise eligible in accordance with the provisions of this section, whether arrested, cited in lieu of arrest, referred for prosecution without citation, charged, convicted, or adjudicated prior to, on, or subsequent to July 19, 2018.

Source: Laws 1978, LB 713, § 25; Laws 1980, LB 782, § 1; Laws 1997, LB 856, § 1; Laws 2007, LB470, § 1; Laws 2015, LB605, § 73; Laws 2016, LB505, § 1; Laws 2018, LB1132, § 3; Laws 2019, LB686, § 12.

ARTICLE 39

PUBLIC DEFENDERS AND APPOINTED COUNSEL

(a) INDIGENT DEFENDANTS

Section

29-3903. Indigent defendant; right to counsel; appointment.

(c) COUNTY REVENUE ASSISTANCE ACT

29-3920. Legislative findings.

29-3922. Terms, defined.

29-3925. Commission; chairperson; expenses.

29-3928. Chief counsel; qualifications; salary.

29-3929. Chief counsel; duties.

29-3930. Commission; divisions established.

(a) INDIGENT DEFENDANTS

29-3903 Indigent defendant; right to counsel; appointment.

At a felony defendant's first appearance before a judge, the judge shall advise him or her of the right to court-appointed counsel if such person is indigent. If he or she asserts indigency, the court shall make a reasonable inquiry to determine such person's financial condition and shall require him or her to execute an affidavit of indigency for filing with the clerk of the court.

If the court determines the defendant to be indigent, it shall formally appoint the public defender or, in counties not having a public defender, an attorney or attorneys licensed to practice law in this state, not exceeding two, to represent the indigent felony defendant at all future critical stages of the criminal proceedings against such defendant, consistent with the provisions of section 23-3402, but appointed counsel other than the public defender must obtain leave of court before being authorized to proceed beyond an initial direct appeal to either the Court of Appeals or the Supreme Court of Nebraska to any further direct, collateral, or postconviction appeals to state or federal courts.

A felony defendant who is not indigent at the time of his or her first appearance before a judge may nevertheless assert his or her indigency at any subsequent stage of felony proceedings, at which time the judge shall consider appointing counsel as otherwise provided in this section.

The judge, upon filing such order for appointment, shall note all appearances of appointed counsel upon the record. If at the time of appointment of counsel the indigent felony defendant and appointed counsel have not had a reasonable opportunity to consult concerning the prosecution, the judge shall continue the arraignment, trial, or other next stage of the felony proceedings for a reasonable period of time to allow for such consultation.

Source: Laws 1972, LB 1463, § 6; Laws 1979, LB 241, § 3; Laws 1984, LB 189, § 4; R.S.1943, (1989), § 29-1804.07; Laws 1990, LB 822, § 21; Laws 1991, LB 732, § 89; Laws 2018, LB193, § 62.

(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.

29-3925 Commission; chairperson; expenses.

The Governor shall designate one of the members of the commission as the chairperson. The members of the commission shall be reimbursed for expenses

incurred in the performance of their duties as provided in sections 81-1174 to 81-1177.

Source: Laws 1995, LB 646, § 7; Laws 2020, LB381, § 24.
Operative date January 1, 2021.

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

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(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 40

SEX OFFENDERS

(a) SEX OFFENDER REGISTRATION ACT

Section

29-4003. Applicability of act.

29-4007. Sentencing court; duties; Department of Correctional Services or local facility; Department of Motor Vehicles; notification requirements; Attorney General; approve form.

(c) DANGEROUS SEX OFFENDERS

29-4019. Offense requiring lifetime community supervision; sentencing court; duties.

(a) SEX OFFENDER REGISTRATION ACT

29-4003 Applicability of act.

(1)(a) The Sex Offender Registration Act applies to any person who on or after January 1, 1997:

(i) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

(A) Kidnapping of a minor pursuant to section 28-313, except when the person is the parent of the minor and was not convicted of any other offense in this section;

(B) False imprisonment of a minor pursuant to section 28-314 or 28-315;

(C) Sexual assault pursuant to section 28-319 or 28-320;

(D) Sexual abuse by a school employee pursuant to section 28-316.01;

(E) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(F) Sexual assault of a child in the first degree pursuant to section 28-319.01;

(G) Sexual abuse of a vulnerable adult or senior adult pursuant to subdivision (1)(c) of section 28-386;

(H) Incest of a minor pursuant to section 28-703;

(I) Pandering of a minor pursuant to section 28-802;

(J) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or subdivision (2)(b) or (c) of section 28-1463.05;

(K) Knowingly possessing any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers pursuant to subsection (1) or (4) of section 28-813.01;

(L) Criminal child enticement pursuant to section 28-311;

(M) Child enticement by means of an electronic communication device pursuant to section 28-320.02;

(N) Debauching a minor pursuant to section 28-805; or

(O) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(a)(i)(A) through (1)(a)(i)(N) of this section;

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(a)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon;

(iii) Is incarcerated in a jail, a penal or correctional facility, or any other public or private institution or is under probation or parole as a result of pleading guilty to or being found guilty of a registrable offense under subdivision (1)(a)(i) or (ii) of this section prior to January 1, 1997; or

(iv) Enters the state and is required to register as a sex offender under the laws of another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States.

(b) In addition to the registrable offenses under subdivision (1)(a) of this section, the Sex Offender Registration Act applies to any person who on or after January 1, 2010:

(i)(A) Except as provided in subdivision (1)(b)(i)(B) of this section, has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

(I) Murder in the first degree pursuant to section 28-303;

- (II) Murder in the second degree pursuant to section 28-304;
- (III) Manslaughter pursuant to section 28-305;
- (IV) Assault in the first degree pursuant to section 28-308;
- (V) Assault in the second degree pursuant to section 28-309;
- (VI) Assault in the third degree pursuant to section 28-310;
- (VII) Stalking pursuant to section 28-311.03;
- (VIII) Violation of section 28-311.08 requiring registration under the act pursuant to subsection (6) of section 28-311.08;
- (IX) Kidnapping pursuant to section 28-313;
- (X) False imprisonment pursuant to section 28-314 or 28-315;
- (XI) Sexual abuse of an inmate or parolee in the first degree pursuant to section 28-322.02;
- (XII) Sexual abuse of an inmate or parolee in the second degree pursuant to section 28-322.03;
- (XIII) Sexual abuse of a protected individual pursuant to section 28-322.04;
- (XIV) Incest pursuant to section 28-703;
- (XV) Child abuse pursuant to subdivision (1)(d) or (e) of section 28-707;
- (XVI) Enticement by electronic communication device pursuant to section 28-833; or
- (XVII) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(b)(i)(A)(I) through (1)(b)(i)(A)(XVI) of this section.

(B) In order for the Sex Offender Registration Act to apply to the offenses listed in subdivisions (1)(b)(i)(A)(I), (II), (III), (IV), (V), (VI), (VII), (IX), and (X) of this section, a court shall have found that evidence of sexual penetration or sexual contact, as those terms are defined in section 28-318, was present in the record, which shall include consideration of the factual basis for a plea-based conviction and information contained in the presentence report;

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(b)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon; or

(iii) Enters the state and is required to register as a sex offender under the laws of another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States.

(c) In addition to the registrable offenses under subdivisions (1)(a) and (b) of this section, the Sex Offender Registration Act applies to any person who on or after January 1, 2020:

(i) Has ever pled guilty to, pled nolo contendere to, or been found guilty of sexual abuse of a detainee under section 28-322.05; or

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under

subdivision (1)(c)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon.

(2) A person appealing a conviction of a registrable offense under this section shall be required to comply with the act during the appeals process.

Source: Laws 1996, LB 645, § 3; Laws 2002, LB 564, § 3; Laws 2004, LB 943, § 9; Laws 2005, LB 713, § 4; Laws 2006, LB 1199, § 18; Laws 2009, LB97, § 25; Laws 2009, LB285, § 4; Laws 2011, LB61, § 2; Laws 2014, LB998, § 6; Laws 2016, LB934, § 11; Laws 2019, LB519, § 14; Laws 2019, LB630, § 7; Laws 2020, LB881, § 26.

Effective date November 14, 2020.

29-4007 Sentencing court; duties; Department of Correctional Services or local facility; Department of Motor Vehicles; notification requirements; Attorney General; approve form.

(1) When sentencing a person convicted of a registrable offense under section 29-4003, the court shall:

(a) Provide written notification of the duty to register under the Sex Offender Registration Act at the time of sentencing to any defendant who has pled guilty or has been found guilty of a registrable offense under section 29-4003. The written notification shall:

(i) Inform the defendant of whether or not he or she is subject to the act, the duration of time he or she will be subject to the act, and that he or she shall report to a location designated by the Nebraska State Patrol for purposes of accepting such registration within three working days after the date of the written notification to register;

(ii) Inform the defendant that if he or she moves to another address within the same county, he or she must report to the county sheriff of the county in which he or she is residing within three working days before his or her move;

(iii) Inform the defendant that if he or she no longer has a residence, temporary domicile, or habitual living location, he or she shall report such change in person to the sheriff of the county in which he or she is located within three working days after such change in residence, temporary domicile, or habitual living location;

(iv) Inform the defendant that if he or she moves to another county in the State of Nebraska, he or she must notify, in person, the county sheriff of the county in which he or she had been last residing, had a temporary domicile, or had a habitual living location and the county sheriff of the county in which he or she is residing, has a temporary domicile, or is habitually living of his or her current address. The notice must be given within three working days before his or her move;

(v) Inform the defendant that if he or she moves to another state, he or she must report, in person, the change of address to the county sheriff of the county in which he or she has been residing, has had a temporary domicile, or has had a habitual living location and must comply with the registration requirements

of the state to which he or she is moving. The notice must be given within three working days before his or her move;

(vi) Inform the defendant that he or she shall (A) inform the sheriff of the county in which he or she resides, has a temporary domicile, or is habitually living, in person, of each educational institution at which he or she is employed, carries on a vocation, or attends school, within three working days after such employment or attendance, and (B) notify the sheriff of any change in such employment or attendance status of such person at such educational institution, within three working days;

(vii) Inform the defendant that he or she shall (A) inform the sheriff of the county in which the employment site is located, in person, of the name and address of any place where he or she is or will be an employee, within three working days after such employment, and (B) inform the sheriff of the county in which the employment site is located, in person, of any change in his or her employment;

(viii) Inform the defendant that if he or she goes to another state to work or goes to another state as a student and still resides, has a temporary domicile, or has a habitual living location in this state, he or she must comply with the registration requirements of both states;

(ix) Inform the defendant that fingerprints, palm prints, a DNA sample if not previously collected, and a photograph will be obtained by any registering entity in order to comply with the registration requirements;

(x) Inform the defendant of registry and verification locations; and

(xi) Inform the defendant of the reduction request requirements, if eligible, under section 29-4005;

(b) Require the defendant to read and sign the registration form stating that the duty of the defendant to register under the Sex Offender Registration Act has been explained;

(c) Retain the original notification signed by the defendant; and

(d) Provide a copy of the filed notification, the information or amended information, and the sentencing order of the court to the county attorney, the defendant, the sex offender registration and community notification division of the Nebraska State Patrol, and the county sheriff of the county in which the defendant resides, has a temporary domicile, or has a habitual living location.

(2) When a person is convicted of a registrable offense under section 29-4003 and is not subject to immediate incarceration upon sentencing, prior to being released by the court, the sentencing court shall ensure that the defendant is registered by a Nebraska State Patrol office or other location designated by the patrol for purposes of accepting registrations.

(3)(a) The Department of Correctional Services or a city or county correctional or jail facility shall provide written notification of the duty to register pursuant to the Sex Offender Registration Act to any person committed to its custody for a registrable offense under section 29-4003 prior to the person's release from incarceration. The written notification shall:

(i) Inform the person of whether or not he or she is subject to the act, the duration of time he or she will be subject to the act, and that he or she shall report to a location designated by the Nebraska State Patrol for purposes of accepting such registration within three working days after the date of the written notification to register;

(ii) Inform the person that if he or she moves to another address within the same county, he or she must report all address changes, in person, to the county sheriff of the county in which he or she has been residing within three working days before his or her move;

(iii) Inform the defendant that if he or she no longer has a residence, temporary domicile, or habitual living location, he or she shall report such change in person to the sheriff of the county in which he or she is located within three working days after such change in residence, temporary domicile, or habitual living location;

(iv) Inform the person that if he or she moves to another county in the State of Nebraska, he or she must notify, in person, the county sheriff of the county in which he or she had been last residing, had a temporary domicile, or had a habitual living location and the county sheriff of the county in which he or she is residing, has a temporary domicile, or is habitually living of his or her current address. The notice must be given within three working days before his or her move;

(v) Inform the person that if he or she moves to another state, he or she must report, in person, the change of address to the county sheriff of the county in which he or she has been residing, has had a temporary domicile, or has been habitually living and must comply with the registration requirements of the state to which he or she is moving. The report must be given within three working days before his or her move;

(vi) Inform the person that he or she shall (A) inform the sheriff of the county in which he or she resides, has a temporary domicile, or is habitually living, in person, of each educational institution at which he or she is employed, carries on a vocation, or attends school, within three working days after such employment or attendance, and (B) notify the sheriff of any change in such employment or attendance status of such person at such educational institution, within three working days after such change;

(vii) Inform the person that he or she shall (A) inform the sheriff of the county in which the employment site is located, in person, of the name and address of any place where he or she is or will be an employee, within three working days after such employment, and (B) inform the sheriff of the county in which the employment site is located, in person, of any change in his or her employment;

(viii) Inform the person that if he or she goes to another state to work or goes to another state as a student and still resides, has a temporary domicile, or has a habitual living location in this state, he or she must comply with the registration requirements of both states;

(ix) Inform the defendant that fingerprints, palm prints, a DNA sample if not previously collected, and a photograph will be obtained by any registering entity in order to comply with the registration requirements;

(x) Inform the defendant of registry and verification locations; and

(xi) Inform the defendant of the reduction request requirements, if eligible, under section 29-4005.

(b) The Department of Correctional Services or a city or county correctional or jail facility shall:

(i) Require the person to read and sign the notification form stating that the duty to register under the Sex Offender Registration Act has been explained;

(ii) Retain a signed copy of the written notification to register; and

(iii) Provide a copy of the signed, written notification to register to the person and to the sex offender registration and community notification division of the Nebraska State Patrol.

(4) If a person is convicted of a registrable offense under section 29-4003 and is immediately incarcerated, he or she shall be registered as required under the act prior to discharge, parole, or work release.

(5) The Department of Motor Vehicles shall cause written notification of the duty to register to be provided on the applications for a motor vehicle operator's license and for a commercial driver's license.

(6) All written notification as provided in this section shall be on a form approved by the Attorney General.

Source: Laws 1996, LB 645, § 7; Laws 1998, LB 204, § 1; Laws 2002, LB 564, § 7; Laws 2006, LB 1199, § 22; Laws 2009, LB97, § 27; Laws 2009, LB285, § 8; Laws 2015, LB292, § 7; Laws 2018, LB193, § 63.

(c) DANGEROUS SEX OFFENDERS

29-4019 Offense requiring lifetime community supervision; sentencing court; duties.

(1) When sentencing a person convicted of an offense which requires lifetime community supervision upon release pursuant to section 83-174.03, the sentencing court shall:

(a) Provide written notice to the defendant that he or she shall be subject to lifetime community supervision by the Division of Parole Supervision upon release from incarceration or civil commitment. The written notice shall inform the defendant (i) that he or she shall be subject to lifetime community supervision by the division upon release and that the division shall conduct a risk assessment and evaluation to determine the conditions of community supervision which will minimize, in the least restrictive manner that is compatible with public safety, the risk of the defendant committing additional offenses, (ii) that a violation of any of the conditions of community supervision imposed by the division may result in the revision of existing conditions, the addition of new conditions, a recommendation that civil commitment proceedings should be instituted, or criminal prosecution, and (iii) of his or her right to challenge the determination of the conditions of community supervision by the division and the right to a periodic review of the conditions of community supervision pursuant to section 83-174.03 to determine if the conditions are still necessary to protect the public;

(b) Require the defendant to read and sign a form stating that the duty of the defendant to comply with the conditions of community supervision and his or her rights to challenge the conditions of community supervision imposed by the division has been explained; and

(c) Retain a copy of the written notification signed by the defendant.

(2) Prior to the release of a person serving a sentence for an offense requiring lifetime community supervision by the Division of Parole Supervision pursuant to section 83-174.03, the Department of Correctional Services, the Department of Health and Human Services, or a city or county correctional or jail facility shall:

(a) Provide written notice to the person that he or she shall be subject to lifetime community supervision by the division upon release from incarceration. The written notice shall inform the person (i) that he or she shall be subject to lifetime community supervision by the division upon release and that the division shall conduct a risk assessment and evaluation of the defendant to determine the conditions of community supervision which will minimize, in the least restrictive manner that is compatible with public safety, the risk of the person committing additional offenses, (ii) that a violation of any of the conditions of community supervision imposed by the division may result in the revision of existing conditions, the addition of new conditions, a recommendation that civil commitment proceedings should be instituted, or criminal prosecution, and (iii) of his or her right to challenge the determination of the conditions of community supervision by the division and the right to a periodic review of the conditions of community supervision pursuant to section 83-174.03 to determine if the conditions are still necessary to protect the public;

(b) Require the defendant to read and sign a form stating that the duty of the defendant to comply with the conditions of community supervision and his or her right to challenge the conditions of community supervision imposed by the division has been explained; and

(c) Retain a copy of the written notification signed by the person.

Source: Laws 2006, LB 1199, § 106; Laws 2018, LB841, § 5.

ARTICLE 41 DNA TESTING

(a) DNA IDENTIFICATION INFORMATION ACT

Section

29-4108. DNA samples and DNA records; confidentiality.

29-4115.01. State DNA Sample and Data Base Fund; created; use; investment.

(a) DNA IDENTIFICATION INFORMATION ACT

29-4108 DNA samples and DNA records; confidentiality.

(1) All DNA samples and DNA records submitted to the State DNA Sample Bank or the State DNA Data Base are confidential except as otherwise provided in the DNA Identification Information Act. The Nebraska State Patrol shall make DNA records in the State DNA Data Base available:

(a) To law enforcement agencies and forensic DNA laboratories which serve such agencies and which participate in the Combined DNA Index System; and

(b) Upon written or electronic request and in furtherance of an official investigation of a criminal offense or offender or suspected offender.

(2) The Nebraska State Patrol shall adopt and promulgate rules and regulations governing the methods of obtaining information from the State DNA Data Base and the Combined DNA Index System and procedures for verification of the identity and authority of the requester.

(3) The Nebraska State Patrol may, for good cause shown, revoke or suspend the right of a forensic DNA laboratory in this state to have access to or submit records to the State DNA Data Base.

(4) For purposes of this subsection, person means a law enforcement agency, the Federal Bureau of Investigation, any forensic DNA laboratory, or person.

No records or DNA samples shall be provided to any person unless such person enters into a written agreement with the Nebraska State Patrol to comply with the provisions of section 29-4109 relative to expungement, when notified by the Nebraska State Patrol that expungement has been granted. Every person shall comply with the provisions of section 29-4109 within ten calendar days of receipt of such notice and certify in writing to the Nebraska State Patrol that such compliance has been effectuated. The Nebraska State Patrol shall provide notice of such certification to the person who was granted expungement.

Source: Laws 1997, LB 278, § 8; Laws 2006, LB 385, § 9; Laws 2020, LB106, § 1.

Effective date November 14, 2020.

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.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 42

AUDIOVISUAL COURT APPEARANCES

Section

29-4205. Audiovisual court appearance; procedures.

29-4205 Audiovisual court appearance; procedures.

In a proceeding in which an audiovisual court appearance is made:

(1) Facsimile signatures or electronically reproduced signatures are acceptable for purposes of releasing the detainee or prisoner from custody; however, actual signed copies of the release documents must be promptly filed with the court and the detainee or prisoner must promptly be provided with a copy of all documents which the detainee or prisoner signs;

(2) The record of the court reporting personnel shall be the official record of the proceeding; and

(3) On motion of the detainee or prisoner or the prosecuting attorney or in the court's discretion, the court may terminate an audiovisual appearance and require an appearance by the detainee or prisoner.

Source: Laws 1999, LB 623, § 5; Laws 2006, LB 1115, § 24; Laws 2018, LB983, § 1.

ARTICLE 43

SEXUAL ASSAULT AND DOMESTIC VIOLENCE

(c) SEXUAL ASSAULT EVIDENCE COLLECTION

Section

29-4307. City of the primary or metropolitan class; annual report.

(d) SEXUAL ASSAULT VICTIMS' BILL OF RIGHTS ACT

29-4308. Act, how cited.

29-4309. Terms, defined.

29-4310. Privileged communication; presence of others; effect; prosecutor; duty.

29-4311. Medical evidentiary or physical examinations; rights of victim.

29-4312. Interview or deposition; rights of victim.

29-4313. Sexual assault forensic evidence; rights of victim.

29-4314. Sexual assault forensic evidence; uses prohibited.

29-4315. Explanation of rights; required, when; contents.

(c) SEXUAL ASSAULT EVIDENCE COLLECTION

29-4307 City of the primary or metropolitan class; annual report.

On or before December 1, 2020, and annually thereafter, each city of the primary class and city of the metropolitan class shall make a report listing the number of untested sexual assault evidence collection kits for such city. The report shall contain aggregate data only and shall not contain any personal identifying information. The report shall be made publicly available on the city's web site and shall be electronically submitted to the Attorney General and to the Legislature.

Source: Laws 2020, LB881, § 1.

Effective date November 14, 2020.

(d) SEXUAL ASSAULT VICTIMS' BILL OF RIGHTS ACT

29-4308 Act, how cited.

Sections 29-4308 to 29-4315 shall be known and may be cited as the Sexual Assault Victims' Bill of Rights Act.

Source: Laws 2020, LB43, § 1.

Effective date November 14, 2020.

29-4309 Terms, defined.

For the purposes of the Sexual Assault Victims' Bill of Rights Act:

(1)(a) Advocate means:

(i) Any employee or supervised volunteer of a domestic violence and sexual assault victim assistance program or of any other agency, business, or organization that is not affiliated with a law enforcement or prosecutor's office, whose primary purpose is assisting domestic violence and sexual assault victims. This includes employees or supervised volunteers of an Indian tribe or a postsecondary educational institution;

(ii) A representative from a victim and witness assistance center as established in sections 81-1845 to 81-1847 or a similar entity affiliated with a law enforcement agency or prosecutor's office; or

(iii) An advocate who is employed by a child advocacy center that meets the requirements of subsection (2) of section 28-728.

(b) If reasonably possible, an advocate shall speak the victim's preferred language or use the services of a qualified interpreter;

(2) Health care provider means any individual who is licensed, certified, or registered to perform specified health services consistent with state law;

(3) Sexual assault means a violation of section 28-319, 28-319.01, 28-320, 28-320.01, 28-320.02, 28-322.01, 28-322.02, 28-322.03, 28-322.04, 28-322.05, 28-703, or 28-1463.03, sex trafficking or sex trafficking of a minor under section 28-831, or subdivision (1)(c) or (g) of section 28-386 or subdivision (1)(d), (e), or (f) of section 28-707;

(4) Sexual assault forensic evidence means evidence collected by a health care provider contained within any sexual assault forensic evidence collection kit, including a toxicology kit, or any forensic evidence collected by law enforcement through the course of an investigation; and

(5)(a) Sexual assault victim or victim means any person who is a victim of sexual assault who reports such sexual assault:

(i) To a health care provider, law enforcement, or an advocate, including anonymous reporting as provided in section 28-902; and

(ii) In the case of a victim who is under eighteen years of age, to the Department of Health and Human Services.

(b) Sexual assault victim or victim also includes, if the victim described in subdivision (5)(a) of this section is incompetent, deceased, or a minor who is unable to consent to counseling services, such victim's parent, guardian, or spouse, unless such person is the reported assailant.

Source: Laws 2020, LB43, § 2.

Effective date November 14, 2020.

29-4310 Privileged communication; presence of others; effect; prosecutor; duty.

Notwithstanding any provision of Chapter 27, article 5, any communication with a victim which is privileged, whether by statute, court order, or common law, shall retain such privilege regardless of who is present during the communication so long as the victim has a privilege with respect to each individual present. Nothing in this section shall relieve the prosecutor of the prosecutor's duty to disclose and make known to the defendant or the defendant's attorney any and all exculpatory material or information suitable for impeachment which is known to the prosecutor.

Source: Laws 2020, LB43, § 3.

Effective date November 14, 2020.

29-4311 Medical evidentiary or physical examinations; rights of victim.

(1) A victim has the right to have an advocate of the victim's choosing present during a medical evidentiary or physical examination. The health care provider shall contact the advocate before beginning the medical evidentiary or physical examination, unless declined by the victim. If an advocate cannot appear in a timely manner, the health care provider shall inform the victim of the potential impact of delaying the examination.

(2) A victim retains such right to have an advocate present at any time during any medical evidentiary or physical examination, regardless of whether the victim has previously waived such right.

(3) A victim has the right to a free forensic medical examination as provided in section 81-1429.03 without regard to whether a victim participates in the criminal justice system or cooperates with law enforcement.

(4) A victim has the right to be provided health care in accordance with best practices and established protocols for age-appropriate sexual assault forensic medical examinations as set forth in publications of the Office on Violence Against Women of the United States Department of Justice.

(5) A victim has the protection of confidential communications as provided in sections 29-4301 to 29-4304.

(6) A victim has the right to shower at no cost after the medical evidentiary or physical examination, unless showering facilities are not available.

(7) A victim has the right to anonymous reporting as provided in section 28-902.

Source: Laws 2020, LB43, § 4.

Effective date November 14, 2020.

29-4312 Interview or deposition; rights of victim.

(1)(a) A victim has the right to have an advocate present during an interview by a peace officer, prosecutor, or defense attorney, unless no advocate can appear in a reasonably timely manner. In an interview involving a prosecutor, the prosecutor shall inform the victim of the victim's rights under this subsection. The peace officer, prosecutor, or defense attorney shall contact the advocate before beginning the interview, unless declined by the victim.

(b) A victim has the right to have an advocate present during a deposition as provided in sections 29-1917 and 29-1926.

(c) An advocate present at an interview or deposition under this subsection shall not interfere in the interview or deposition or provide legal advice.

(d) Nothing in this subsection shall preclude law enforcement officers or prosecutors from contacting a victim directly to make limited inquiries regarding the sexual assault.

(2) A victim has the right to be interviewed by a peace officer of the gender of the victim's choosing, if such request can be reasonably accommodated by a peace officer that is properly trained to conduct such interviews.

(3) A victim has the right to be interviewed by a peace officer that speaks the victim's preferred language or to have a qualified interpreter available, if such request can be reasonably accommodated.

(4) A peace officer, prosecutor, or defense attorney shall not, for any reason, discourage a victim from receiving a medical evidentiary or physical examination.

(5) A victim has the right to counsel. This subsection does not create a new obligation by the state or a political subdivision to appoint or pay for counsel. Treatment of the victim shall not be affected or altered in any way as a result of the victim's decision to exercise such right to counsel.

(6) A victim who is a child three to eighteen years of age has the right to a forensic interview at a child advocacy center by a professional with specialized

training as provided in section 28-728. The right to have an advocate, representative, or attorney present shall not apply during such a forensic interview.

Source: Laws 2020, LB43, § 5.

Effective date November 14, 2020.

29-4313 Sexual assault forensic evidence; rights of victim.

(1) A victim has the right to timely analysis of sexual assault forensic evidence.

(2) Subject to section 28-902, a health care provider shall notify the appropriate law enforcement agency of a victim's reported sexual assault and submit to law enforcement the sexual assault forensic evidence, if evidence has been obtained.

(3) A law enforcement agency shall collect the sexual assault forensic evidence upon notification by the health care provider and shall retain the sexual assault forensic evidence for the longer of the statute of limitations applicable to the sexual assault or the retention period set forth in subsection (4) of section 28-902.

(4) A victim has a right to contact the investigating law enforcement agency and be provided with information on the status of the processing and analysis of the victim's sexual assault forensic evidence, if the victim did not report anonymously.

(5) A victim has the right to have the results of the analysis of the victim's sexual assault forensic evidence uploaded to the appropriate local, state, and federal DNA data bases, as allowed by law.

(6) A victim has the right to be informed by the investigating law enforcement agency, upon the victim's request, of the results of analysis of the victim's sexual assault forensic evidence, whether the analysis yielded a DNA profile, and whether the analysis yielded a DNA match, either to the named perpetrator or to a suspect already in the Federal Bureau of Investigation's Combined DNA Index System, so long as the provision of such information would not hinder or interfere with investigation or prosecution of the case associated with such information.

(7) A victim has the right to inspect or request copies of law enforcement reports concerning the sexual assault at the conclusion of the case.

Source: Laws 2020, LB43, § 6.

Effective date November 14, 2020.

29-4314 Sexual assault forensic evidence; uses prohibited.

Sexual assault forensic evidence from a victim shall not be used:

(1) To prosecute such victim for any misdemeanor crime or any crime under the Uniform Controlled Substances Act; or

(2) As a basis to search for further evidence of any misdemeanor crime or any crime under the Uniform Controlled Substances Act that may have been committed by the victim.

Source: Laws 2020, LB43, § 7.

Effective date November 14, 2020.

Cross References

Uniform Controlled Substances Act, see section 28-401.01.

29-4315 Explanation of rights; required, when; contents.

(1) Upon an initial interaction with a victim relating to or arising from a sexual assault of such victim, a health care provider or peace officer, and in the case of a victim under eighteen years of age, the Department of Health and Human Services, shall provide the victim with information that explains the rights of victims under the Sexual Assault Victims' Bill of Rights Act and other relevant law. The information shall be presented in clear language that is comprehensible to a person proficient in English at the fifth grade level, accessible to persons with visual disabilities, and available in all major languages spoken in this state. This information shall include, but not be limited to:

(a) A clear statement that a victim is not required to participate in the criminal justice system or to undergo a medical evidentiary or physical examination in order to retain the rights provided by the act and other relevant law;

(b) Contact information for appropriate services provided by professionals in the fields of domestic violence and sexual assault, including advocates;

(c) State and federal relief available to victims of crime;

(d) Law enforcement protection available to the victim, including domestic violence protection orders, harassment protection orders, and sexual assault protection orders and the process to obtain such protection;

(e) Instructions for requesting information regarding the victim's sexual assault forensic evidence as provided in section 29-4313; and

(f) State and federal compensation funds for medical and other costs associated with the sexual assault and information on any municipal, state, or federal right to restitution for a victim in the event of a conviction.

(2) The information to be provided under subsection (1) of this section shall be developed by the Attorney General and the Nebraska Commission on Law Enforcement and Criminal Justice with input from prosecutors, sexual assault victims, and organizations with a statewide presence with expertise on domestic violence, sexual assault, and child sexual assault.

(3) The information to be provided under subsection (1) of this section shall be made available for viewing and download on the web sites of the Department of Health and Human Services and the Nebraska Commission on Law Enforcement and Criminal Justice. Other relevant state agencies are also encouraged to make such information available on their web sites.

Source: Laws 2020, LB43, § 8.

Effective date November 14, 2020.

ARTICLE 47**JAILHOUSE INFORMANTS**

Section

29-4701. Terms, defined.

29-4702. Applicability.

29-4703. Prosecutor's office; duties.

29-4704. Disclosures required; deadline; redaction of information; prosecutor; duties.

29-4705. Jailhouse informant receiving leniency; notice to victim.

29-4706. Court orders authorized.

29-4701 Terms, defined.

For purposes of sections 29-4701 to 29-4706:

(1) Benefit means any plea bargain, bail consideration, reduction or modification of sentence, or any other leniency, immunity, financial payment, reward, or amelioration of current or future conditions of incarceration that has been requested by the jailhouse informant or that has been offered or may be offered in the future to the jailhouse informant in connection with his or her testimony in the criminal proceeding in which the prosecutor intends to call him or her as a witness; and

(2) Jailhouse informant means a person who offers testimony about statements made by a suspect or defendant while the suspect or defendant and jailhouse informant were in the custody of any jail or correctional institution and who has requested or received or may in the future receive a benefit in connection with such testimony.

Source: Laws 2019, LB352, § 1.

29-4702 Applicability.

Sections 29-4701 to 29-4706 apply to any case in which a suspect or defendant is charged with a felony.

Source: Laws 2019, LB352, § 2.

29-4703 Prosecutor's office; duties.

Each prosecutor's office shall undertake measures to maintain a searchable record of:

(1) Each case in which:

(a) Trial testimony is offered or provided by a jailhouse informant against a suspect's or defendant's interest; or

(b) A statement from a jailhouse informant against a suspect's or defendant's interest is used and a criminal conviction is obtained; and

(2) Any benefit requested by or offered or provided to a jailhouse informant in connection with such statement or trial testimony.

Source: Laws 2019, LB352, § 3.

29-4704 Disclosures required; deadline; redaction of information; prosecutor; duties.

(1) Except as provided in subsection (3) of this section, if a prosecutor intends to use the testimony or statement of a jailhouse informant at a defendant's trial, the prosecutor shall disclose to the defense:

(a) The known criminal history of the jailhouse informant;

(b) Any benefit requested by or offered or provided to a jailhouse informant or that may be offered or provided to the jailhouse informant in the future in connection with such testimony;

(c) The specific statements allegedly made by the defendant against whom the jailhouse informant will testify or provide a statement and the time, place, and manner of the defendant's disclosures;

(d) The case name and jurisdiction of any criminal case known to the prosecutor in which the jailhouse informant testified or a prosecutor intended to have the jailhouse informant testify about statements made by another suspect or criminal defendant that were disclosed to the jailhouse informant and whether the jailhouse informant requested, was offered, or received any benefit in exchange for or subsequent to such testimony; and

(e) Any occasion known to the prosecutor in which the jailhouse informant recanted testimony about statements made by another suspect or defendant that were disclosed to the jailhouse informant and any transcript or copy of such recantation.

(2) The prosecutor shall disclose the information described in subsection (1) of this section to the defense as soon as practicable after discovery, but no later than thirty days before trial. If the prosecutor seeks to introduce the testimony of a jailhouse informant that was not known until after such deadline, or if the information described in subsection (1) of this section could not have been discovered or obtained by the prosecutor with the exercise of due diligence at least thirty days before the trial or other criminal proceeding, the court may permit the prosecutor to disclose the information as soon as is practicable after the thirty-day period.

(3) If the court finds by clear and convincing evidence that disclosing information listed in subsection (1) of this section will result in the possibility of bodily harm to a jailhouse informant or that a jailhouse informant will be coerced, the court may permit the prosecutor to redact some or all of such information.

(4) If, at any time subsequent to the deadline in subsection (2) of this section, the prosecutor discovers additional material required to be disclosed under subsection (1) of this section, the prosecutor shall promptly:

(a) Notify the court of the existence of the additional material; and

(b) Disclose such material to the defense, except as provided in subsection (3) of this section.

Source: Laws 2019, LB352, § 4.

29-4705 Jailhouse informant receiving leniency; notice to victim.

If a jailhouse informant receives leniency related to a pending charge, a conviction, or a sentence for a crime against a victim as defined in section 29-119, in connection with offering or providing testimony against a suspect or defendant, the prosecutor shall notify such victim. Prior to reaching a plea agreement, the prosecutor shall proceed as provided in subsection (1) of section 23-1201. For purposes of this section, leniency means any plea bargain, reduced or dismissed charges, bail consideration, or reduction or modification of sentence.

Source: Laws 2019, LB352, § 5.

29-4706 Court orders authorized.

If, at any time during the course of the proceedings, it is brought to the attention of the court that the prosecutor has failed to comply with section 29-4704, or an order issued pursuant to this section, the court may:

(1) Order the prosecutor to disclose materials not previously disclosed;

- (2) Grant a continuance;
- (3) Prohibit the prosecutor from calling a witness not disclosed or introducing in evidence the material not disclosed; or
- (4) Enter such other order as it deems just under the circumstances.

Source: Laws 2019, LB352, § 6.

DECEDENTS' ESTATES

**CHAPTER 30
DECEDENTS' ESTATES; PROTECTION
OF PERSONS AND PROPERTY**

Article.

- 2. Wills. 30-201 to 30-209.
- 6. Health Care Surrogacy Act. 30-601 to 30-619.
- 7. Family Visitation. 30-701 to 30-713.
- 9. Banking Transactions Involving Trust or Estate Assets. 30-901.
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- 22. Probate Jurisdiction.
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 - Part 1— Intestate Succession. 30-2312.01, 30-2312.02.
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- 44. Advance Mental Health Care Directives Act. 30-4401 to 30-4415.
- 45. Uniform Trust Decanting Act. 30-4501 to 30-4529.

**ARTICLE 2
WILLS**

Section

- 30-201. Act, how cited; terms, defined.
- 30-202. International will; validity.
- 30-203. International will; requirements.
- 30-204. International will; other points of form.

Section

- 30-205. International will; certificate.
30-206. International will; effect of certificate.
30-207. International will; revocation.
30-208. Source and construction.
30-209. Persons authorized to act in relation to international will; eligibility; recognition by authorizing agency.

30-201 Act, how cited; terms, defined.

Sections 30-201 to 30-209 shall be known and may be cited as the Uniform Wills Recognition Act (1977).

In the Uniform Wills Recognition Act (1977):

(1) International will means a will executed in conformity with sections 30-202 to 30-205; and

(2) Authorized person and person authorized to act in connection with international wills mean a person who by section 30-209, or by the laws of the United States including members of the diplomatic and consular service of the United States designated by Foreign Service Regulations, is empowered to supervise the execution of international wills.

Source: Laws 2020, LB966, § 1.
Effective date November 14, 2020.

30-202 International will; validity.

(a) A will is valid as regards form, irrespective particularly of the place where it is made, of the location of the assets, and of the nationality, domicile, or residence of the testator, if it is made in the form of an international will complying with the requirements of the Uniform Wills Recognition Act (1977).

(b) The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

(c) The Uniform Wills Recognition Act (1977) shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Source: Laws 2020, LB966, § 2.
Effective date November 14, 2020.

30-203 International will; requirements.

(a) The will shall be made in writing. It need not be written by the testator personally. It may be written in any language, by hand or by any other means.

(b) The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is the testator's will and that the testator knows the contents thereof. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

(c) In the presence of the witnesses, and of the authorized person, the testator shall sign the will or, if the testator has previously signed it, shall acknowledge the testator's signature.

(d) When the testator is unable to sign, the absence of the testator's signature does not affect the validity of the international will if the testator indicates the reason for the testator's inability to sign and the authorized person makes note thereof on the will. In these cases, it is permissible for any other person

present, including the authorized person or one of the witnesses, at the direction of the testator, to sign the testator’s name for the testator, if the authorized person makes note of this also on the will, but it is not required that any person sign the testator’s name for the testator.

(e) The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Source: Laws 2020, LB966, § 3.
Effective date November 14, 2020.

30-204 International will; other points of form.

(a) The signatures shall be placed at the end of the will. If the will consists of several sheets, each sheet will be signed by the testator or, if the testator is unable to sign, by the person signing on the testator’s behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

(b) The date of the will shall be the date of its signature by the authorized person. That date shall be noted at the end of the will by the authorized person.

(c) The authorized person shall ask the testator whether the testator wishes to make a declaration concerning the safekeeping of the testator’s will. If so and at the express request of the testator, the place where the testator intends to have the testator’s will kept shall be mentioned in the certificate provided for in section 30-205.

(d) A will executed in compliance with section 30-203 is not invalid merely because it does not comply with this section.

Source: Laws 2020, LB966, § 4.
Effective date November 14, 2020.

30-205 International will; certificate.

The authorized person shall attach to the will a certificate to be signed by the authorized person establishing that the requirements of the Uniform Wills Recognition Act (1977) for valid execution of an international will have been complied with. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate shall be substantially in the following form:

CERTIFICATE

(Convention of October 26, 1973)

1. I, (name, address, and capacity), a person authorized to act in connection with international wills

2. Certify that on (date) at (place)

3. (testator) (name, address, date, and place of birth) in my presence and that of the witnesses

4. (a) (name, address, date, and place of birth)

(b) (name, address, date, and place of birth)

has declared that the attached document is the testator’s will and that the testator knows the contents thereof.

5. I furthermore certify that:

6. (a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged the testator's signature previously affixed.

*(2) following a declaration of the testator stating that the testator was unable to sign the testator's will for the following reason , and I have mentioned this declaration on the will

*and the signature has been affixed by (name, address)

7. (b) the witnesses and I have signed the will;

8. *(c) each page of the will has been signed by and numbered;

9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

11. *(f) the testator has requested me to include the following statement concerning the safekeeping of the testator's will:

.....

12. PLACE

13. DATE

14. SIGNATURE

and, if necessary, SEAL

*to be completed if appropriate

Source: Laws 2020, LB966, § 5.
Effective date November 14, 2020.

30-206 International will; effect of certificate.

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under the Uniform Wills Recognition Act (1977). The absence or irregularity of a certificate shall not affect the formal validity of a will under the act.

Source: Laws 2020, LB966, § 6.
Effective date November 14, 2020.

30-207 International will; revocation.

The international will shall be subject to the ordinary rules of revocation of wills.

Source: Laws 2020, LB966, § 7.
Effective date November 14, 2020.

30-208 Source and construction.

Sections 30-201 to 30-207 derive from Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying the Uniform Wills Recognition Act (1977), regard

shall be had to its international origin and to the need for uniformity in its interpretation.

Source: Laws 2020, LB966, § 8.
Effective date November 14, 2020.

30-209 Persons authorized to act in relation to international will; eligibility; recognition by authorizing agency.

Individuals who have been admitted to practice law before the courts of this state and who are in good standing as active law practitioners in this state, are hereby declared to be authorized persons in relation to international wills.

Source: Laws 2020, LB966, § 9.
Effective date November 14, 2020.

ARTICLE 6

HEALTH CARE SUROGACY ACT

Section

- 30-601. Act, how cited.
- 30-602. Legislative intent; act, how construed.
- 30-603. Terms, defined.
- 30-604. Surrogate; powers; designation of surrogate; priorities; consensus; meeting; continuation of authority; disqualification of surrogate.
- 30-605. Persons disqualified to serve as surrogate.
- 30-606. Incapability; determination; documentation.
- 30-607. Notice.
- 30-608. County court procedure; petition; guardian ad litem; hearing.
- 30-609. Surrogate; powers; objection to surrogate decision; how treated.
- 30-610. Surrogate; duties.
- 30-611. Primary health care provider; duties.
- 30-612. Petition; purposes; filed with county court.
- 30-613. Person eligible to file petition.
- 30-614. Liability for criminal offense; civil liability; violation of professional oath or code of ethics.
- 30-615. Individual's rights.
- 30-616. Health care provider; exercise medical judgment.
- 30-617. Health care facility; rights; health care provider; rights.
- 30-618. Attempted suicide; how construed.
- 30-619. Prohibited acts; penalties.

30-601 Act, how cited.

Sections 30-601 to 30-619 shall be known and may be cited as the Health Care Surrogacy Act.

Source: Laws 2018, LB104, § 1.

30-602 Legislative intent; act, how construed.

(1) It is the intent of the Legislature to establish a process for the designation of a person to make a health care decision for an adult or an emancipated minor who becomes incapable of making such a decision in the absence of a guardian or an advance health care directive.

(2) The Legislature does not intend to encourage or discourage any particular health care decision or to create any new right or alter any existing right of competent adults or emancipated minors to make such decisions, but the Legislature does intend through the Health Care Surrogacy Act to allow an adult or an emancipated minor to exercise rights he or she already possesses by

means of health care decisions made on his or her behalf by a qualified surrogate.

(3) The Health Care Surrogacy Act shall not confer any new rights regarding the provision or rejection of any specific medical treatment and shall not alter any existing law concerning homicide, suicide, or assisted suicide. Nothing in the Health Care Surrogacy Act shall be construed to condone, authorize, or approve purposefully causing, or assisting in causing, the death of any individual, such as by homicide, suicide, or assisted suicide.

Source: Laws 2018, LB104, § 2.

30-603 Terms, defined.

For purposes of the Health Care Surrogacy Act:

- (1) Adult means an individual who is nineteen years of age or older;
- (2) Advance health care directive means an individual instruction under the Health Care Surrogacy Act, a declaration executed in accordance with the Rights of the Terminally Ill Act, or a power of attorney for health care;
- (3) Agent means a natural person designated in a power of attorney for health care to make a health care decision on behalf of the natural person granting the power;
- (4) Capable means (a) able to understand and appreciate the nature and consequences of a proposed health care decision, including the benefits of, risks of, and alternatives to any proposed health care, and (b) able to communicate in any manner such health care decision;
- (5) Emancipated minor means a minor who is emancipated pursuant to the law of this state or another state, including section 43-2101;
- (6) Guardian means a judicially appointed guardian or conservator having authority to make a health care decision for a natural person;
- (7) Health care means any care, treatment, service, procedure, or intervention to maintain, diagnose, cure, care for, treat, or otherwise affect an individual's physical or mental condition;
- (8)(a) Health care decision means a decision made by an individual or the individual's agent, guardian, or surrogate regarding the individual's health care, including consent, refusal of consent, or withdrawal of consent to health care; and
 - (b) Health care decision includes:
 - (i) Selection and discharge of health care providers, health care facilities, and health care services;
 - (ii) Approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and
 - (iii) Directions to provide nutrition, hydration, and all other forms of health care;
- (9) Health care facility means a facility licensed under the Health Care Facility Licensure Act or permitted by law to provide health care in the ordinary course of business;
- (10) Health care provider means a natural person credentialed under the Uniform Credentialing Act or permitted by law to provide health care in the ordinary course of business or practice of a profession;

(11) Health care service means an adult day service, a home health agency, a hospice or hospice service, a respite care service, or a children's day health service licensed under the Health Care Facility Licensure Act or permitted by law to provide health care in the ordinary course of business. Health care service does not include an in-home personal services agency as defined in section 71-6501;

(12) Incapable means lacking the ability to understand and appreciate the nature and consequences of a proposed health care decision, including the benefits of, risks of, and alternatives to any proposed health care, or lacking the ability to communicate in any manner such health care decision;

(13) Individual means an adult or an emancipated minor for whom a health care decision is to be made;

(14) Individual instruction means an individual's direction concerning a health care decision for the individual;

(15) Life-sustaining procedure means any medical procedure, treatment, or intervention that (a) uses mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function and (b) when applied to a person who is in a terminal condition or who is in a persistent vegetative state, serves only to prolong the dying process. Life-sustaining procedure does not include routine care necessary to maintain patient comfort or the usual and typical provision of nutrition and hydration;

(16) Persistent vegetative state means a medical condition that, to a reasonable degree of medical certainty as determined in accordance with then current accepted medical standards, is characterized by a total and irreversible loss of consciousness and capacity for cognitive interaction with the environment and no reasonable hope of improvement;

(17) Physician means a natural person licensed to practice medicine and surgery or osteopathic medicine under the Uniform Credentialing Act;

(18) Power of attorney for health care means the designation of an agent under sections 30-3401 to 30-3432 or a similar law of another state to make health care decisions for the principal;

(19) Primary health care provider means (a) a physician designated by an individual or the individual's agent, guardian, or surrogate to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility or (b) if there is no such primary physician or such primary physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care;

(20) Principal means a natural person who, when competent, confers upon another natural person a power of attorney for health care;

(21) Reasonably available means readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of an individual's health care needs;

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

(23) Surrogate means a natural person who is authorized under section 30-604 to make a health care decision on behalf of an individual when a

guardian or an agent under a power of attorney for health care has not been appointed or otherwise designated for such individual;

(24) Terminal condition means a medical condition caused by injury, disease, or physical illness which, to a reasonable degree of medical certainty, will result in death within six months regardless of the continued application of medical treatment, including life-sustaining procedures; and

(25) Usual and typical provision of nutrition and hydration means delivery of food and fluids orally, including by cup, eating utensil, bottle, or drinking straw.

Source: Laws 2018, LB104, § 3.

Cross References

Health Care Facility Licensure Act, see section 71-401.

Rights of the Terminally Ill Act, see section 20-401.

Uniform Credentialing Act, see section 38-101.

30-604 Surrogate; powers; designation of surrogate; priorities; consensus; meeting; continuation of authority; disqualification of surrogate.

(1) A surrogate may make a health care decision for an individual if the individual has been determined to be incapable by the primary health care provider and no agent or guardian has been appointed for the individual. A determination that an individual is incapable of making a health care decision shall not be construed as a finding that the individual is incapable for any other purpose.

(2)(a) An individual may designate a natural person to act as surrogate for the individual by personally informing the primary health care provider.

(b) If an individual has not designated a surrogate and there is no power of attorney for health care or court-appointed guardian for the individual, any member of the following classes of natural persons, in the following order of priority, may act as surrogate for the individual if such person is reasonably available at the time the health care decision is to be made on behalf of the individual and if such person has not been disqualified under the Health Care Surrogacy Act:

(i) The individual's spouse unless legally separated from the individual or unless proceedings are pending for divorce, annulment, or legal separation between the individual and his or her spouse;

(ii) A child of the individual who is an adult or an emancipated minor;

(iii) A parent of the individual; or

(iv) A brother or sister of the individual who is an adult or an emancipated minor.

(c) A person in a class with greater priority to serve as a surrogate may decline to serve as surrogate by informing the primary health care provider of that fact. Such fact shall be noted in the individual's medical record.

(d) The primary health care provider may use discretion to disqualify a person who would otherwise be eligible to act as a surrogate based on the priority listed in subdivision (b) of this subsection if the provider has documented or otherwise clear and convincing evidence of an abusive relationship or documented or otherwise clear and convincing evidence of another basis for finding that the potential surrogate is not acting on behalf of or in the best interests of the individual. Any evidence so used to disqualify a person from

acting as a surrogate shall be documented in full in the individual's medical record.

(3) A person who has exhibited special care and concern for the individual, who is familiar with the individual's personal values, and who is reasonably available to act as a surrogate is eligible to act as a surrogate under subsection (2) of this section.

(4) A surrogate shall communicate his or her assumption of authority as promptly as possible to the members of the individual's family specified in subsection (2) of this section who can be readily contacted.

(5)(a) If more than one member of a class having priority has authority to act as an individual's surrogate, such persons may act as the individual's surrogate and any of such persons may be identified as one of the individual's surrogates by the primary health care provider within the individual's medical record, so long as such persons are in agreement about the health care decision to be made on behalf of the individual and attest to such agreement in a writing signed and dated by all persons claiming the authority and provided to the primary health care provider for inclusion with the individual's medical record.

(b)(i) If two or more members of a class having the same priority claim authority to act as an individual's surrogate and such persons are not in agreement about one or more health care decisions to be made on the individual's behalf, the persons claiming authority shall confer with each other for purposes of arriving at consensus regarding the health care decision to be made in light of the individual's known desires about health care, the individual's personal values, the individual's religious or moral beliefs, and the individual's best interests. Each person claiming authority to act as an individual's surrogate shall inform the primary health care provider about his or her claim and priority under the Health Care Surrogacy Act, the claim of any other person within the same class, the nature of the disagreement regarding the health care decision, and the efforts made by such person to reach agreement between and among other persons claiming authority to act as the individual's surrogate.

(ii) To the extent possible, the primary health care provider shall seek a consensus of the persons claiming authority to act as the individual's surrogate. The primary health care provider may convene a meeting of such persons with the primary health care provider and, as available and appropriate, other health care personnel involved in the individual's care for purposes of reviewing and discussing the individual's condition, prognosis, and options for treatment, the risks, benefits, or burdens of such options, the individual's known desires about health care, the individual's personal values, the individual's religious or moral beliefs, and the individual's best interests. If reasonably available, the primary health care provider may include members of other classes of priority in such meeting to hear and participate in the discussion.

(iii) The primary health care provider, in his or her discretion or at the request of the persons claiming authority as the individual's surrogate, may also seek the assistance of other health care providers or the ethics committee or ethics consultation process of the health care facility or another health care entity to facilitate the meeting.

(iv) If a consensus about the health care decisions to be made on behalf of the individual cannot be attained between the persons of the same class of priority claiming authority to act as the individual's surrogate to enable a timely

decision to be made on behalf of the individual, then such persons shall be deemed disqualified to make health care decisions on behalf of the individual. The primary health care provider may then confer with other persons in the same class or within the other classes of lower priority consistent with subsection (2) of this section who may be reasonably available to make health care decisions on behalf of the individual.

(v) If no other person is reasonably available to act as a surrogate on behalf of the individual, then the primary health care provider may, consistent with the Health Care Surrogacy Act, take actions or decline to take actions determined by the primary health care provider to be appropriate, to be in accordance with the individual's personal values, if known, and moral and religious beliefs, if known, and to be in the best interests of the individual.

(6) A surrogate's authority shall continue in effect until the earlier of any of the following:

- (a) A guardian is appointed for the individual;
- (b) The primary health care provider determines that the individual is capable of making his or her own health care decision;
- (c) A person with higher priority to act as a surrogate under subsection (2) of this section becomes reasonably available;
- (d) The individual is transferred to another health care facility; or
- (e) The death of the individual.

(7)(a) An individual, if able to communicate the same, may disqualify another person from serving as the individual's surrogate, including a member of the individual's family, by a signed and dated writing or by personally informing the primary health care provider and a witness of the disqualification. In order to be a witness under this subdivision, a person shall be an adult or emancipated minor who is not among the persons who may serve as a surrogate under subsection (2) of this section.

(b) When the existence of a disqualification under this subsection becomes known, it shall be made a part of the individual's medical record at the health care facility in which the individual is a patient or resides. The disqualification of a person to serve as a surrogate shall not revoke or terminate the authority as to a surrogate who acts in good faith under the surrogacy and without actual knowledge of the disqualification. An action taken in good faith and without actual knowledge of the disqualification of a person to serve as the individual's surrogate under this subsection, unless the action is otherwise invalid or unenforceable, shall bind the individual and his or her heirs, devisees, and personal representatives.

(8) A primary health care provider may require a person claiming the right to act as surrogate for an individual to provide a written declaration under penalty of perjury stating facts and circumstances reasonably sufficient to establish that person's claimed authority.

(9) The authority of a surrogate shall not supersede any other advance health care directive.

Source: Laws 2018, LB104, § 4.

30-605 Persons disqualified to serve as surrogate.

Unless related to the individual by blood, marriage, or adoption, a surrogate may not be an owner, operator, or employee of a health care facility at which the individual is residing or receiving health care or a facility or an institution of the Department of Correctional Services or the Department of Health and Human Services to which the individual has been committed.

Source: Laws 2018, LB104, § 5.

30-606 Incapability; determination; documentation.

(1) A determination that an individual is incapable of making a health care decision shall be made in writing by the primary health care provider and any physician consulted with respect to such determination, and the physician or physicians shall document the cause and nature of the individual's incapability. The determination shall be included in the individual's medical record with the primary health care provider and, when applicable, with the consulting physician and the health care facility in which the individual is a patient or resides. When a surrogate has been designated or determined pursuant to section 30-604, the surrogate shall be included in the individual's medical record.

(2) A physician who has been designated an individual's surrogate shall not make the determination that the individual is incapable of making health care decisions.

Source: Laws 2018, LB104, § 6.

30-607 Notice.

Notice of a determination that an individual is incapable of making health care decisions shall be given by the primary health care provider (1) to the individual when there is any indication of the individual's ability to comprehend such notice, (2) to the surrogate, and (3) to the health care facility.

Source: Laws 2018, LB104, § 7.

30-608 County court procedure; petition; guardian ad litem; hearing.

If a dispute arises as to whether the individual is incapable, a petition may be filed with the county court in the county in which the individual resides or is located requesting the court's determination as to whether the individual is incapable of making health care decisions. If such a petition is filed, the court shall appoint a guardian ad litem to represent the individual. The court shall conduct a hearing on the petition within seven days after the court's receipt of the petition. Within seven days after the hearing, the court shall issue its determination. If the court determines that the individual is incapable, the authority, rights, and responsibilities of the individual's surrogate shall become effective. If the court determines that the individual is capable, the authority, rights, and responsibilities of the surrogate shall not become effective.

Source: Laws 2018, LB104, § 8.

30-609 Surrogate; powers; objection to surrogate decision; how treated.

(1) When the authority conferred on a surrogate under the Health Care Surrogacy Act has commenced, the surrogate, subject to any individual instructions, shall make health care decisions on the individual's behalf, except that the surrogate shall not have authority (a) to consent to any act or omission to which the individual could not consent under law, (b) to make any decision

when the individual is known to be pregnant that will result in the death of the individual's unborn child if it is probable that the unborn child will develop to the point of live birth with continued application of health care, or (c) to make decisions regarding withholding or withdrawing a life-sustaining procedure or withholding or withdrawing artificially administered nutrition or hydration except as provided under section 30-610.

(2) If no agent or guardian has been appointed for the individual, the surrogate shall have priority over any person other than the individual to act for the individual in all health care decisions, except that the surrogate shall not have the authority to make any health care decision unless and until the individual has been determined to be incapable of making health care decisions pursuant to section 30-606.

(3) A person who would not otherwise be personally responsible for the cost of health care provided to the individual shall not become personally responsible for such cost because he or she has acted as the individual's surrogate.

(4) Except to the extent that the right is limited by the individual, a surrogate shall have the same right as the individual to receive information regarding the proposed health care, to receive and review medical and clinical records, and to consent to the disclosures of such records, except that the right to access such records shall not be a waiver of any evidentiary privilege.

(5) Notwithstanding a determination pursuant to section 30-606 that the individual is incapable of making health care decisions, when the individual objects to the determination or to a health care decision made by a surrogate, the individual's objection or decision shall prevail unless the individual is determined by a county court to be incapable of making health care decisions.

Source: Laws 2018, LB104, § 9.

30-610 Surrogate; duties.

(1) In exercising authority under the Health Care Surrogacy Act, a surrogate shall have a duty to consult with medical personnel, including the primary health care provider, and thereupon to make health care decisions (a) in accordance with the individual instructions or the individual's wishes as otherwise made known to the surrogate or (b) if the individual's wishes are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with the individual's best interests, with due regard for the individual's religious and moral beliefs if known.

(2) Notwithstanding subdivision (1)(b) of this section, the surrogate shall not have the authority to consent to the withholding or withdrawing of a life-sustaining procedure or artificially administered nutrition or hydration unless (a) the individual is suffering from a terminal condition or is in a persistent vegetative state and such procedure or care would be an extraordinary or disproportionate means of medical treatment to the individual and (b) the individual explicitly grants such authority to the surrogate and the intent of the individual to have life-sustaining procedures or artificially administered nutrition or hydration withheld or withdrawn under such circumstances is established by clear and convincing evidence.

(3) In exercising any decision, the surrogate shall have no authority to withhold or withdraw consent to routine care necessary to maintain patient comfort or the usual and typical provision of nutrition and hydration.

Source: Laws 2018, LB104, § 10.

30-611 Primary health care provider; duties.

Before acting upon a health care decision made by a surrogate, other than those decisions made at or about the time of the initial determination of incapacity, the primary health care provider shall confirm that the individual continues to be incapable. The confirmation shall be stated in writing and shall be included in the individual's medical records. The notice requirements set forth in section 30-607 shall not apply to the confirmation required by this section.

Source: Laws 2018, LB104, § 11.

30-612 Petition; purposes; filed with county court.

(1) A petition may be filed for any one or more of the following purposes:

(a) To determine whether the authority of a surrogate under the Health Care Surrogacy Act is in effect or has been revoked or terminated;

(b) To determine whether the acts or proposed acts of a surrogate are consistent with the individual instruction or the individual's wishes as expressed or otherwise established by clear and convincing evidence or, when the wishes of the individual are unknown, whether the acts or proposed acts of the surrogate are clearly contrary to the best interests of the individual;

(c) To declare that the authority of a surrogate is revoked upon a determination by the court that the surrogate made or proposed to make a health care decision for the individual that authorized an illegal act or omission; or

(d) To declare that the authority of a surrogate is revoked upon a determination by the court of both of the following: (i) That the surrogate has violated, failed to perform, or is unable to perform the duty to act in a manner consistent with the individual instruction or the wishes of the individual or, when the desires of the individual are unknown, to act in a manner that is in the best interests of the individual; and (ii) that at the time of the determination by the court, the individual is unable to disqualify the surrogate as provided in subsection (7) of section 30-604.

(2) A petition under this section shall be filed with the county court of the county in which the individual resides or is located.

Source: Laws 2018, LB104, § 12.

30-613 Person eligible to file petition.

A petition under section 30-608 or 30-612 may be filed by any of the following:

(1) The individual;

(2) The surrogate;

(3) The spouse, parent, sibling, or child of the individual who is an adult or an emancipated minor;

(4) A close friend of the individual who is an adult or an emancipated minor;

(5) The primary health care provider or another health care provider; or

(6) Any other interested party.

Source: Laws 2018, LB104, § 13.

30-614 Liability for criminal offense; civil liability; violation of professional oath or code of ethics.

(1) A surrogate shall not be guilty of any criminal offense, subject to any civil liability, or in violation of any professional oath or code of ethics or conduct for any action taken in good faith pursuant to the Health Care Surrogacy Act.

(2) No primary health care provider, other health care provider, or health care facility shall be subject to criminal prosecution, civil liability, or professional disciplinary action for acting or declining to act in reliance upon the decision made by a person whom the primary health care provider or other health care provider in good faith believes is the surrogate. This subsection does not limit the liability of a primary health care provider, other health care provider, or health care facility for a negligent act or omission in connection with the medical diagnosis, treatment, or care of the individual.

Source: Laws 2018, LB104, § 14.

30-615 Individual's rights.

The existence of a surrogate for an individual under the Health Care Surrogacy Act does not waive the right of the individual to routine hygiene, nursing, and comfort care and the usual and typical provision of nutrition and hydration.

Source: Laws 2018, LB104, § 15.

30-616 Health care provider; exercise medical judgment.

In following the decision of a surrogate, a health care provider shall exercise the same independent medical judgment that the health care provider would exercise in following the decision of the individual if the individual were not incapable.

Source: Laws 2018, LB104, § 16.

30-617 Health care facility; rights; health care provider; rights.

(1) Nothing in the Health Care Surrogacy Act obligates a health care facility to honor a health care decision by a surrogate that the health care facility would not honor if the decision had been made by the individual because the decision is contrary to a formally adopted policy of the health care facility that is expressly based on religious beliefs or sincerely held ethical or moral convictions central to the operating principles of the health care facility. The health care facility may refuse to honor the decision whether made by the individual or by the surrogate if the health care facility has informed the individual or the surrogate of such policy, if reasonably possible. If the surrogate is unable or unwilling to arrange a transfer to another health care facility, the health care facility refusing to honor the decision may intervene to facilitate such a transfer.

(2) Nothing in the Health Care Surrogacy Act obligates a health care provider to honor or cooperate with a health care decision by a surrogate that the health care provider would not honor or cooperate with if the decision had been made by the individual because the decision is contrary to the health care provider's religious beliefs or sincerely held moral or ethical convictions. The health care provider shall promptly inform the surrogate and the health care facility of his or her refusal to honor or cooperate with the decision of the surrogate. In such

event, the health care facility shall promptly assist in the transfer of the individual to a health care provider selected by the individual or the surrogate.

Source: Laws 2018, LB104, § 17.

30-618 Attempted suicide; how construed.

For purposes of making health care decisions, an attempted suicide by an individual shall not be construed as any indication of his or her wishes with regard to health care.

Source: Laws 2018, LB104, § 18.

30-619 Prohibited acts; penalties.

(1) It shall be a Class II felony for a person to willfully conceal or destroy evidence of any person's disqualification as a surrogate under the Health Care Surrogacy Act with the intent and effect of causing the withholding or withdrawing of life-sustaining procedures or artificially administered nutrition or hydration which hastens the death of the individual.

(2) It shall be a Class I misdemeanor for a person without the authorization of the individual to willfully alter, forge, conceal, or destroy evidence of an advance health care directive, appointment of a guardian, appointment of an agent for the individual under a power of attorney for health care, or evidence of disqualification of any person as a surrogate under the Health Care Surrogacy Act.

(3) A physician or other health care provider who willfully prevents the transfer of an individual in accordance with section 30-617 with the intention of avoiding the provisions of the Health Care Surrogacy Act shall be guilty of a Class I misdemeanor.

Source: Laws 2018, LB104, § 19.

ARTICLE 7

FAMILY VISITATION

Section

- 30-701. Terms, defined.
- 30-702. Legislative intent.
- 30-703. Petition to compel visitation; court findings; factors.
- 30-704. Emergency hearing; temporary orders.
- 30-705. Costs and attorney's fees; remedies.
- 30-706. Petition; contents; confidential; stay; when.
- 30-707. Simultaneous proceedings; how treated.
- 30-708. Appointment of guardian ad litem or visitor.
- 30-709. Jurisdiction; venue; court rules; notice; appeal; retention of jurisdiction.
- 30-710. Order; appeal.
- 30-711. Court; examine evidence; issue discovery orders.
- 30-712. Visitation schedule; civil contempt; remedies.
- 30-713. Burden of proof.

30-701 Terms, defined.

For purposes of sections 30-701 to 30-713:

(1) Adult child means an individual who is at least nineteen years of age and who is related to a resident biologically, through adoption, through the marriage or former marriage of the resident to the biological parent of the adult

child, or by a judgment of parentage entered by a court of competent jurisdiction;

(2) Caregiver means a guardian, a designee under a power of attorney for health care, or another person or entity denying visitation access between a family member petitioner and a resident;

(3) Family member petitioner means the spouse, adult child, adult grandchild, parent, grandparent, sibling, aunt, uncle, niece, nephew, cousin, or domestic partner of a resident;

(4) Guardian ad litem has the definition found in section 30-2601;

(5) Isolation has the definition found in section 28-358.01;

(6) Resident means an adult resident of:

(a) A health care facility as defined in section 71-413; or

(b) Any home or other residential dwelling in which the resident is receiving care and services from any person;

(7) Visitation means an in-person meeting or any telephonic, written, or electronic communication; and

(8) Visitor means a person appointed pursuant to section 30-2619.01.

Source: Laws 2017, LB122, § 1; R.S.Supp.,2017, § 42-1301; Laws 2018, LB845, § 1.

30-702 Legislative intent.

It is the intent of the Legislature that, in order to allow family member petitioners to remain connected, a caregiver may not arbitrarily deny visitation to a family member petitioner of a resident, whether or not the caregiver is related to such family member petitioner, unless such action is authorized by a nursing home administrator pursuant to section 71-6021.

Source: Laws 2017, LB122, § 2; R.S.Supp.,2017, § 42-1302; Laws 2018, LB845, § 2.

30-703 Petition to compel visitation; court findings; factors.

(1) If a family member petitioner is being denied visitation with a resident, the family member petitioner may petition the county court to compel visitation with the resident. If a guardian has been appointed for the resident under the jurisdiction of a county court, the petition shall be filed in the county court having such jurisdiction. If there is no such guardianship, the petition shall be filed in the county court for the county in which the resident resides. The court may not issue an order compelling visitation if the court finds any of the following:

(a) The resident, while having the capacity to evaluate and communicate decisions regarding visitation, expresses a desire to not have visitation with the family member petitioner; or

(b) Visitation between the family member petitioner and the resident is not in the best interests of the resident.

(2) In determining whether visitation between the family member petitioner and the resident has been arbitrarily denied, the court may consider factors including, but not limited to:

- (a) The nature of relationship of the family member petitioner and the resident;
- (b) The place where visitation rights will be exercised;
- (c) The frequency and duration of the visits;
- (d) The likely effect of visitation on the resident; and
- (e) The likelihood of onerously disrupting established lifestyle of the resident.

Source: Laws 2018, LB845, § 3.

30-704 Emergency hearing; temporary orders.

If the petition filed pursuant to section 30-703 states that the resident's health is in significant decline or that the resident's death may be imminent, the court shall conduct an emergency hearing on the petition as soon as practicable and in no case later than ten days after the date the petition is served upon the resident and the caregiver. Each party to a contested proceeding for an emergency order relating to visitation under this section shall offer a verified information affidavit as an exhibit at the hearing before the court. If the allegations made under this section to request an emergency hearing are not made with probable cause, the court may order appropriate remedies under section 30-705. Temporary orders may be issued in the same manner as provided for guardianships. Temporary orders shall expire ninety days after the entry of the temporary order unless good cause is shown for continuation.

Source: Laws 2017, LB122, § 3; R.S.Supp.,2017, § 42-1303; Laws 2018, LB845, § 4.

30-705 Costs and attorney's fees; remedies.

(1) Upon a motion by a party or upon the court's own motion, if the court finds during a hearing pursuant to section 30-704 that a person is knowingly isolating the resident from visitation by a family member petitioner, the court may order such person to pay court costs and reasonable attorney's fees of the family member petitioner and may order other appropriate remedies.

(2) No costs, fees, or other sanctions may be paid from the resident's finances or estate.

(3) If the court determines that the family member petitioner did not have probable cause for filing the petition, the court may order the family member petitioner to pay court costs and reasonable attorney's fees of the other parties and may order other appropriate remedies.

(4) Remedies may include the payment of the fees and costs of a visitor or a guardian ad litem.

(5) An order may be entered prohibiting the family member petitioner from filing another petition under sections 30-701 to 30-713 in any court in this state for any period of time determined appropriate by the court for up to one year.

Source: Laws 2017, LB122, § 4; R.S.Supp.,2017, § 42-1304; Laws 2018, LB845, § 5.

30-706 Petition; contents; confidential; stay; when.

(1) Any action under sections 30-701 to 30-713 shall be commenced by filing in the county court a verified petition described in section 30-703. The family member petitioner shall include, if reasonably ascertainable under oath, the

places where the resident has resided and the names and present addresses of the persons with whom the resident has lived during the previous five years. The petition shall include a statement under oath identifying whether:

(a) The family member petitioner has participated as a party, as a witness, or in any other capacity or in any other proceeding concerning custody or visitation with the resident and if so, identify the court, the case number, and the date of any order which may affect visitation;

(b) The family member petitioner knows of any proceeding that could affect the current proceeding relating to domestic violence, a protective order, termination of parental rights, adoption, guardianship, conservatorship, or habeas corpus or any other civil or criminal proceeding, and if so, identify the court, the case number, and the date of any order which may affect visitation;

(c) The family member petitioner knows the name and address of any person not a party to the proceeding who has physical custody of, is residing with, or is providing residential services to the resident and if so, the name and address of such person;

(d) The resident needs a guardian ad litem or a visitor appointed;

(e) Any other state would have jurisdiction under the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act;

(f) A bond or probation condition exists which would affect the case; and

(g) The family member petitioner has filed petitions under section 30-703 within the preceding five years and if so, the court, the case number, and the date of any order resolving the prior petitions.

(2) Any matters which may be confidential under court rule or statute shall be filed as a confidential document for review by the court as to whether such matters shall remain filed as confidential matters.

(3) If the information required by subsection (1) of this section is not furnished, the court, upon the motion of a party or its own motion, may stay the proceeding until the information is furnished.

Source: Laws 2018, LB845, § 6.

Cross References

Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, see section 30-3901.

30-707 Simultaneous proceedings; how treated.

Any proceeding involving a guardianship, conservatorship, power of attorney for health care decisions, or power of attorney granted by the resident may continue in the trial court while an appeal is pending from an order granted under sections 30-701 to 30-713.

Source: Laws 2018, LB845, § 7.

30-708 Appointment of guardian ad litem or visitor.

At any point in a proceeding under sections 30-701 to 30-713, the court may appoint a guardian ad litem or a visitor.

Source: Laws 2018, LB845, § 8.

30-709 Jurisdiction; venue; court rules; notice; appeal; retention of jurisdiction.

(1) Jurisdiction under sections 30-701 to 30-713 applies to any resident who is in this state or for whom the provisions of the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act vests authority over such resident in the courts of this state in a guardianship.

(2) Venue shall be determined pursuant to sections 30-703 and 30-2212.

(3) The Supreme Court shall have the authority pursuant to section 30-2213 to establish rules to carry into effect the provisions of sections 30-701 to 30-713.

(4) The notice provisions of section 30-2220 shall apply to a proceeding under sections 30-701 to 30-713.

(5) When final orders relating to proceedings under sections 30-701 to 30-713 are on appeal and such appeal is pending, the court that issued such orders shall retain jurisdiction to provide for such orders regarding visitation or other access or to prevent irreparable harm during the pendency of such appeal or other appropriate orders in aid of the appeal process. Such orders shall not be construed to prejudice any party on appeal.

Source: Laws 2018, LB845, § 9.

Cross References

Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, see section 30-3901.

30-710 Order; appeal.

Any order that is not intended as interlocutory or temporary under sections 30-701 to 30-713 shall be a final, appealable order. Such order may be appealed to the Court of Appeals in the same manner as an appeal from the district court directly to the Court of Appeals. The Court of Appeals shall conduct its review in an expedited manner and shall render its judgment and write its opinion, if any, as speedily as possible. The court may modify an existing order granting such visitation upon a showing that there has been a material change in circumstances which justifies such modification and that the modification would serve the best interests of the resident.

Source: Laws 2018, LB845, § 10.

30-711 Court; examine evidence; issue discovery orders.

In a proceeding under sections 30-701 to 30-713, the court may examine any medical evidence in camera or issue any protective discovery orders needed to comply with the provisions of the federal Health Insurance Portability and Accountability Act of 1996, any regulations promulgated under such federal act, or any other provision of law.

Source: Laws 2018, LB845, § 11.

30-712 Visitation schedule; civil contempt; remedies.

If the court enters a visitation order in a proceeding under sections 30-701 to 30-713, it may set out a visitation schedule including the time, place, and manner of visitation. Failure to comply with the order may be the subject of a civil contempt proceeding and may be subject to remedies under section 30-705. The court may provide for an expiration date or a review date in its order, and such a provision does not affect the appealability of an order under section 30-710.

Source: Laws 2018, LB845, § 12.

30-713 Burden of proof.

In a proceeding under sections 30-701 to 30-712, the burden of proof is upon the family member petitioner to establish his or her case by a preponderance of the evidence.

Source: Laws 2018, LB845, § 13.

ARTICLE 9**BANKING TRANSACTIONS INVOLVING TRUST OR ESTATE ASSETS**

Section

30-901. Copersonal representatives, cotrustees, coguardians, or coconservators; authority to act.

30-901 Copersonal representatives, cotrustees, coguardians, or coconservators; authority to act.

On and after January 1, 2020, in any case in which copersonal representatives, cotrustees, coguardians, or coconservators have been appointed, unless specifically restricted in a will, a trust, or an order of appointment, such copersonal representatives, cotrustees, coguardians, or coconservators shall have the authority to act independently with respect to, and shall not be required to act in concert with respect to, banking transactions involving trust or estate assets.

Source: Laws 2019, LB55, § 2.

ARTICLE 16**APPEALS IN PROBATE MATTERS**

Section

30-1601. Appeal; procedure; operate as supersedeas; when; appellant; pay costs; when.

30-1601 Appeal; procedure; operate as supersedeas; when; appellant; pay costs; when.

(1) In all matters arising under the Nebraska Probate Code, in all matters in county court arising under the Nebraska Uniform Trust Code, and in all matters in county court arising under the Health Care Surrogacy Act, appeals may be taken to the Court of Appeals in the same manner as an appeal from district court to the Court of Appeals.

(2) An appeal may be taken by any party and may also be taken by any person against whom the final judgment or final order may be made or who may be affected thereby.

(3) When the appeal is by someone other than a personal representative, conservator, trustee, guardian, guardian ad litem, or surrogate pursuant to the Health Care Surrogacy Act the appealing party shall, within thirty days after the entry of the judgment or final order complained of, deposit with the clerk of the county court a supersedeas bond or undertaking in such sum as the court shall direct, with at least one good and sufficient surety approved by the court, conditioned that the appellant will satisfy any judgment and costs that may be adjudged against him or her, including costs under subsection (6) of this section, unless the court directs that no bond or undertaking need be deposited. If an appellant fails to comply with this subsection, the Court of Appeals on

motion and notice may take such action, including dismissal of the appeal, as is just.

(4) The appeal shall be a supersedeas for the matter from which the appeal is specifically taken, but not for any other matter. In appeals pursuant to sections 30-2601 to 30-2661, upon motion of any party to the action, the county court may remove the supersedeas or require the appealing party to deposit with the clerk of the county court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641. Once the appeal is perfected, the court having jurisdiction over the appeal may, upon motion of any party to the action, reimpose or remove the supersedeas or require the appealing party to deposit with the clerk of the court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641. Upon motion of any interested person or upon the court’s own motion, the county court may appoint a special guardian or conservator pending appeal despite any supersedeas order.

(5) The judgment of the Court of Appeals shall not vacate the judgment in the county court. The judgment of the Court of Appeals shall be certified without cost to the county court for further proceedings consistent with the determination of the Court of Appeals.

(6) If it appears to the Court of Appeals that an appeal was taken vexatiously or for delay, the court shall adjudge that the appellant shall pay the cost thereof, including an attorney’s fee, to the adverse party in an amount fixed by the Court of Appeals, and any bond required under subsection (3) of this section shall be liable for the costs. In a proceeding under sections 30-701 to 30-713, the Court of Appeals may also order remedies under section 30-705.

Source: Laws 1881, c. 47, § 1, p. 227; R.S.1913, § 1526; C.S.1922, § 1471; C.S.1929, § 30-1601; R.S.1943, § 30-1601; Laws 1975, LB 481, § 14; Laws 1981, LB 42, § 17; Laws 1995, LB 538, § 7; Laws 1997, LB 466, § 1; Laws 1999, LB 43, § 18; Laws 2003, LB 130, § 119; Laws 2011, LB157, § 4; Laws 2018, LB104, § 21; Laws 2018, LB845, § 14.

Cross References

Health Care Surrogacy Act, see section 30-601.
 Nebraska Probate Code, see section 30-2201.
 Nebraska Uniform Trust Code, see section 30-3801.

**ARTICLE 22
 PROBATE JURISDICTION**

PART 1—SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

Section
 30-2201. Short title.

PART 1—SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

30-2201 Short title.

Sections 30-401 to 30-406, 30-701 to 30-713, 30-2201 to 30-2902, 30-3901 to 30-3923, 30-4001 to 30-4045, and 30-4201 to 30-4210 and the Public Guardianship Act shall be known and may be cited as the Nebraska Probate Code.

Source: Laws 1974, LB 354, § 1, UPC § 1-101; Laws 1985, LB 292, § 1; Laws 1993, LB 250, § 33; Laws 1993, LB 782, § 2; Laws 1997,

LB 466, § 2; Laws 1999, LB 100, § 1; Laws 2010, LB758, § 1; Laws 2011, LB157, § 28; Laws 2012, LB1113, § 46; Laws 2014, LB788, § 8; Laws 2014, LB920, § 19; Laws 2014, LB998, § 7; Laws 2015, LB43, § 1; Laws 2015, LB422, § 1; Laws 2016, LB934, § 13; Laws 2018, LB845, § 15; Laws 2020, LB966, § 10. Effective date November 14, 2020.

Cross References

Public Guardianship Act, see section 30-4101.

ARTICLE 23
INTESTATE SUCCESSION AND WILLS

PART 1—INTESTATE SUCCESSION

Section

- 30-2312.01. Related by two lines of relationship; single share.
- 30-2312.02. Termination of parental rights; effect.

PART 2—ELECTIVE SHARE OF SURVIVING SPOUSE

- 30-2316. Waiver of right to elect and of other rights; enforceability.

PART 5—WILLS

- 30-2333. Revocation by divorce or annulment; no revocation by other changes of circumstances.
- 30-2336. Property owned at death and acquired by estate.

PART 8—GENERAL PROVISIONS

- 30-2353. Effect of divorce, annulment, and decree of separation.

PART 1—INTESTATE SUCCESSION

30-2312.01 Related by two lines of relationship; single share.

An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

Source: Laws 2020, LB966, § 11.
Effective date November 14, 2020.

30-2312.02 Termination of parental rights; effect.

(a) A parent is barred from inheriting from or through a child of the parent if the parent's parental rights were terminated and the parent-child relationship was not judicially reestablished.

(b) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

Source: Laws 2020, LB966, § 12.
Effective date November 14, 2020.

PART 2—ELECTIVE SHARE OF SURVIVING SPOUSE

30-2316 Waiver of right to elect and of other rights; enforceability.

(a) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance, or any

of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse.

(b) A surviving spouse’s waiver is not enforceable if the surviving spouse proves that:

(1) he or she did not execute the waiver voluntarily; or

(2) the waiver was unconscionable when it was executed and, before execution of the waiver, he or she:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

(iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

(c) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

(d) Unless it provides to the contrary, a waiver of “all rights”, or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation, divorce, or annulment is a waiver of all rights to elective share, homestead allowance, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to him or her from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.

Source: Laws 1974, LB 354, § 38, UPC § 2-204; Laws 1994, LB 202, § 12; Laws 2018, LB847, § 1.

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 reason-

able 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.

30-2336 Property owned at death and acquired by estate.

A will may provide for the passage of all property the testator owns at death and all property acquired by the estate after the testator’s death.

Source: Laws 2020, LB966, § 13.
Effective date November 14, 2020.

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.

ARTICLE 24

PROBATE OF WILLS AND ADMINISTRATION

PART 3—INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

Section

- 30-2414. Informal probate or appointment proceedings; application; contents.
- 30-2416. Informal probate; proof and findings required.

PART 4—FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

- 30-2426. Formal testacy or appointment proceedings; petition; contents.
- 30-2429.01. Formal testacy proceedings; objection; informal probate; petition to set aside; transfer to district court; procedure; fees.

PART 7—DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

- 30-2478. Corepresentatives; when joint action required.

Section

PART 8—CREDITORS' CLAIMS

30-2483. Notice to creditors.

30-2488. Allowance of claims; transfer of certain claims; procedures.

PART 3—INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

30-2414 Informal probate or appointment proceedings; application; contents.

Applications for informal probate or informal appointment shall be directed to the registrar and verified by the applicant to be accurate and complete to the best of the applicant's knowledge and belief as to the following information:

(1) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following:

(i) a statement of the interest of the applicant;

(ii) the name and date of death of the decedent, the decedent's age, and the county and state of domicile at the time of death, and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(iii) if the decedent was not domiciled in the state at the time of death, a statement showing venue;

(iv) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;

(v) a statement indicating whether the applicant has received a demand for notice or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

(2) An application for informal probate of a will shall state the following in addition to the statements required by subdivision (1) of this section:

(i) that the original of the decedent's last will or an authenticated copy of a will probated in another jurisdiction:

(A) is in the possession of the court;

(B) accompanies the application; or

(C) is in the possession of the applicant, that the applicant will deliver such original or authenticated copy to the court within ten days after the filing of the application, and that a true and accurate copy of such original or authenticated copy accompanies the application;

(ii) that the applicant, to the best of the applicant's knowledge, believes the will to have been validly executed; and

(iii) that after the exercise of reasonable diligence the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will.

(3) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the

application or petition for probate and state the name, address and priority for appointment of the person whose appointment is sought.

(4) An application for informal appointment of an administrator in intestacy shall state, in addition to the statements required by subdivision (1) of this section:

(i) that after the exercise of reasonable diligence the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under section 30-2210, or a statement why any such instrument of which the applicant may be aware is not being probated;

(ii) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 30-2412.

(5) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in subsection (c) of section 30-2453, or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

Source: Laws 1974, LB 354, § 92, UPC § 3-301; Laws 1978, LB 650, § 9; Laws 2020, LB966, § 14.

Effective date November 14, 2020.

30-2416 Informal probate; proof and findings required.

(a) In an informal proceeding for original probate of a will, the registrar shall determine whether:

(1) the application is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in subdivision (21) of section 30-2209;

(4) on the basis of the statements in the application, venue is proper;

(5) either:

(i) an original, duly executed, and apparently unrevoked will is in the registrar's possession; or

(ii) the applicant has represented that an original, duly executed, and apparently unrevoked will is in the applicant's possession, the applicant has provided a true and accurate copy of such original will with the application, and the applicant has represented that the original, duly executed, and apparently unrevoked will will be delivered to the court within ten days after the filing of the application; and

(6) any notice required by section 30-2413 has been given and that the application is not within section 30-2417.

(b) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection (d) of this section, if it appears that this or another will of the decedent has been the subject of a previous probate order.

(c) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under section 30-2327, 30-2328, or 30-2331 have been met shall be probated without further proof. In other cases, the registrar may assume execution if the will appears to have been properly executed, or the registrar may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(d) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(e) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (a) of this section may be probated in this state upon receipt by the registrar of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

Source: Laws 1974, LB 354, § 94, UPC § 3-303; Laws 1978, LB 650, § 10; Laws 2020, LB966, § 15.
Effective date November 14, 2020.

PART 4—FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

30-2426 Formal testacy or appointment proceedings; petition; contents.

(a) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing and contain further statements as indicated in this section. A petition for formal probate of a will

(1) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs,

(2) contains the statements required for informal applications as stated in subdivisions (1)(i) through (v) of section 30-2414, the statements required by subdivisions (2)(ii) and (iii) of section 30-2414, and

(3) states whether the original of the last will of the decedent is in the possession of the court, accompanies the petition, or has been filed electronically and will be delivered to the court within ten days after the filing of the application.

The petition also must state the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable if the original will or an authenticated copy of the will probated in another jurisdiction:

(i) is not in the possession of the court;

(ii) did not accompany the application; and
(iii) has not been filed electronically, subject to delivery within ten days after the filing of the application.

(b) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by subdivisions (1) and (4) of section 30-2414 and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case the statements required by subdivision (4)(ii) of section 30-2414 may be omitted.

Source: Laws 1974, LB 354, § 104, UPC § 3-402; Laws 2020, LB966, § 16.

Effective date November 14, 2020.

30-2429.01 Formal testacy proceedings; objection; informal probate; petition to set aside; transfer to district court; procedure; fees.

(1) If there is an objection to probate of a will or if a petition is filed to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, the county court shall continue the originally scheduled hearing for at least fourteen days from the date of the hearing. At any time prior to the continued hearing date any party may transfer the proceeding to determine whether the decedent left a valid will to the district court by filing with the county court a notice of transfer, depositing with the clerk of the county court a docket fee of the district court for cases originally commenced in district court, and paying to the clerk of the county court a fee of twenty dollars.

(2) Within ten days of the completion of the requirements of subsection (1) of this section, the clerk of the county court shall transmit to the clerk of the district court a certification of the case file and docket fee.

(3) Upon the filing of the certification as provided in subsection (2) of this section in the district court, such court shall have jurisdiction over the proceeding on the contest. Within thirty days of the filing of such certification, any party may file additional objections.

(4) The district court may order such additional pleadings as necessary and shall thereafter determine whether the decedent left a valid will. Trial shall be to a jury unless a jury is waived by all parties who have filed pleadings in the matter.

(5) The final decision and judgment in the matter transferred shall be certified to the county court, and proceedings shall be had thereon necessary to carry the final decision and judgment into execution.

Source: Laws 1981, LB 42, § 18; Laws 1985, LB 293, § 3; Laws 1992, LB 999, § 1; Laws 2018, LB193, § 64.

PART 7—DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

30-2478 Corepresentatives; when joint action required.

If two or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not

apply when any corepresentative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, when a corepresentative has been delegated to act for the others, or as provided in section 30-901. Persons dealing with a corepresentative, if actually unaware that another has been appointed to serve with him or her or if advised by the personal representative with whom they deal that he or she has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

Source: Laws 1974, LB 354, § 156, UPC § 3-717; Laws 2019, LB55, § 1.

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.

Source: Laws 1974, LB 354, § 161, UPC § 3-801; Laws 1978, LB 650, § 18; Laws 2008, LB928, § 1; Laws 2017, LB268, § 3; Laws 2019, LB593, § 1.

30-2488 Allowance of claims; transfer of certain claims; procedures.

(a) As to claims presented in the manner described in section 30-2486 within the time limit prescribed in section 30-2485, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his or her decision concerning the claim, he or she shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty days after the mailing of the notice of disallowance or partial allowance if

the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his or her claim for sixty days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

(b) At any time within fourteen days of the filing of a petition for allowance of a claim, the personal representative may transfer the claim to the regular docket of the county court by filing with the court a notice of transfer. The county court shall hear and determine the claim in the same manner as actions originally filed in the county court on the regular docket. The county court may order such additional pleadings as are necessary. If the claim is greater than the jurisdictional amount in subdivision (5) of section 24-517 and the personal representative requests transfer of the claim to the district court, upon payment by the personal representative to the clerk of the district court of a docket fee of the district court, the county court shall transfer the claim to the district court as provided in section 25-2706. If the claim is transferred to the district court, a jury trial is allowed unless waived by the parties as provided under section 25-1104.

(c) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims filed with the clerk of the court in due time and not barred by subsection (a) of this section. Notice in this proceeding shall be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

(d) A final judgment in a proceeding in any court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

(e) Unless otherwise provided in any final judgment in any court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing sixty days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

Source: Laws 1974, LB 354, § 166, UPC § 3-806; Laws 1981, LB 42, § 21; Laws 1983, LB 137, § 4; Laws 1991, LB 422, § 4; Laws 2001, LB 269, § 3; Laws 2018, LB193, § 65.

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 2—GUARDIANS OF MINORS

30-2608. Natural guardians; court appointment of guardian of minor; standby guardian; conditions for appointment; child born out of wedlock; additional considerations; filings.

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.

PART 2—GUARDIANS OF MINORS

30-2608 Natural guardians; court appointment of guardian of minor; stand-by guardian; conditions for appointment; child born out of wedlock; additional considerations; filings.

(a) The father and mother are the natural guardians of their minor children and are duly entitled to their custody and to direct their education, being themselves competent to transact their own business and not otherwise unsuitable. If either dies or is disqualified for acting, or has abandoned his or her family, the guardianship devolves upon the other except as otherwise provided in this section.

(b) In the appointment of a parent as a guardian when the other parent has died and the child was born out of wedlock, the court shall consider the wishes of the deceased parent as expressed in a valid will executed by the deceased parent. If in such valid will the deceased parent designates someone other than the other natural parent as guardian for the minor children, the court shall take into consideration the designation by the deceased parent. In determining whether or not the natural parent should be given priority in awarding custody, the court shall also consider the natural parent's acknowledgment of paternity, payment of child support, and whether the natural parent is a fit, proper, and suitable custodial parent for the child.

(c) The court may appoint a standby guardian for a minor whose parent is chronically ill or near death. The appointment of a guardian under this subsection does not suspend or terminate the parent's parental rights of custody to the minor. The standby guardian's authority would take effect, if the minor is left without a remaining parent, upon (1) the death of the parent, (2)

the mental incapacity of the parent, or (3) the physical debilitation and consent of the parent.

(d) The court may appoint a guardian for a minor if all parental rights of custody have been terminated or suspended by prior or current circumstances or prior court order. The juvenile court may appoint a guardian for a child adjudicated to be under subdivision (3)(a) of section 43-247 as provided in section 43-1312.01. A guardian appointed by will as provided in section 30-2606 whose appointment has not been prevented or nullified under section 30-2607 has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within thirty days after notice of the guardianship proceeding.

(e) The petition and all other court filings for a guardianship proceeding shall be filed with the clerk of the county court. The party shall state in the petition whether such party requests that the proceeding be heard by the county court or, in cases in which a separate juvenile court already has jurisdiction over the child in need of a guardian under the Nebraska Juvenile Code, such separate juvenile court. Such proceeding is considered a county court proceeding even if heard by a separate juvenile court judge, and an order of the separate juvenile court in such guardianship proceeding has the force and effect of a county court order. The testimony in a guardianship proceeding heard before a separate juvenile court judge shall be preserved as in any other separate juvenile court proceeding.

Source: Laws 1974, LB 354, § 226, UPC § 5-204; Laws 1995, LB 712, § 18; Laws 1998, LB 1041, § 4; Laws 1999, LB 375, § 1; Laws 2014, LB908, § 1; Laws 2018, LB193, § 66.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

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.

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 2—MULTIPLE-PERSON ACCOUNTS

SUBPART B—OWNERSHIP AS BETWEEN PARTIES AND OTHERS

30-2723. Rights at death.

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.

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.

PART 2—MULTIPLE-PERSON ACCOUNTS

SUBPART B—OWNERSHIP AS BETWEEN PARTIES AND OTHERS

30-2723 Rights at death.

(a) Except as otherwise provided in sections 30-2716 to 30-2733, on death of a party sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under section 30-2722 belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under such section belongs to the surviving parties in equal shares, and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under section 30-2722, and the right of survivorship continues between the surviving parties.

(b) In an account with a POD designation:

(1) On death of one of two or more parties, the rights in sums on deposit are governed by subsection (a) of this section.

(2)(A) On death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If two or more beneficiaries survive, sums on deposit belong to them in such proportions as specified in the POD designation or, if the POD designation does not specify different proportions, in equal and undivided shares, and there is no right of

survivorship in the event of death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last surviving party.

(B) Except as otherwise specified in the POD designation, if there are two or more beneficiaries, and if any beneficiary fails to survive the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiaries in proportion to their respective interests as beneficiaries under subdivision (2)(A) of this subsection.

(c) Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under section 30-2722 is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

(d) The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death, or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

Source: Laws 1993, LB 250, § 9; Laws 2019, LB55, § 3.

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 manage-

ment 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.

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.

ARTICLE 32

FIDUCIARIES

Section

30-3205. Fiduciary; interests in private investment fund, investment company, or investment trust; investments authorized; bank or trust company; investments authorized.

30-3205 Fiduciary; interests in private investment fund, investment company, or investment trust; investments authorized; bank or trust company; investments authorized.

(1) Notwithstanding the prohibition on investments in section 8-224.01, a fiduciary holding funds for investment may invest such funds in securities of, or other interests in, a private investment fund or any open-end or closed-end management-type investment company or investment trust registered or exempt from registration under the federal Investment Company Act of 1940, as amended, if a court order, will, agreement, or other instrument creating or defining the investment powers of the fiduciary directs, requires, authorizes, or permits the investment of such funds in any of the following:

(a) Such investments as the fiduciary may, in his or her discretion, select;

(b) Investments generally, other than those in which fiduciaries are by law authorized to invest trust funds; and

(c) United States Government obligations if the portfolio of such investment company or investment trust is limited to United States Government obligations and to repurchase agreements fully collateralized by such obligations and if

such investment company or investment trust takes delivery of the collateral, either directly or through an authorized custodian.

(2)(a) Notwithstanding the prohibition on investments in section 8-224.01, a bank or trust company acting as a fiduciary, agent, or otherwise may, in the exercise of its investment discretion or at the direction of another person authorized to direct investment of funds held by the bank or trust company as a fiduciary, invest and reinvest interests in the securities of a private investment fund or an open-end or closed-end management-type investment company or investment trust registered or exempt from registration under the federal Investment Company Act of 1940, as amended, or may retain, sell, or exchange such interests so long as the portfolio of the investment company or investment trust as an entity consists substantially of investments not prohibited by the instrument governing the fiduciary relationship.

(b) The fact that the bank or trust company or an affiliate of the bank or trust company provides services to the investment company, investment trust, or private investment fund, such as that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise, and is receiving reasonable compensation for the services shall not preclude the bank or trust company from investing, reinvesting, retaining, or exchanging any interest held by the trust estate in the securities of a private investment fund or any open-end or closed-end management-type investment company or investment trust registered or exempt from registration under the federal Investment Company Act of 1940, as amended.

Source: Laws 1987, LB 576, § 1; R.S.Supp., 1988, § 24-638; Laws 1993, LB 91, § 1; Laws 2000, LB 932, § 28; Laws 2003, LB 130, § 135; Laws 2020, LB909, § 22.

Operative date November 14, 2020.

ARTICLE 34

HEALTH CARE POWER OF ATTORNEY

Section

30-3402. Terms, defined.

30-3405. Witness; disqualification; declaration.

30-3406. Attorney in fact; disqualification.

30-3408. Power of attorney; form; validity.

30-3423. Attorney in fact; attending physician; health care provider; immunity.

30-3402 Terms, defined.

For purposes of sections 30-3401 to 30-3432:

(1) Adult shall mean any person who is nineteen years of age or older or who is or has been married;

(2) Attending physician shall mean the physician, selected by or assigned to a principal, who has primary responsibility for the care and treatment of such principal;

(3) Attorney in fact shall mean an adult properly designated and authorized under sections 30-3401 to 30-3432 to make health care decisions for a principal pursuant to a power of attorney for health care and shall include a successor attorney in fact;

(4) Health care shall mean any treatment, procedure, or intervention to diagnose, cure, care for, or treat the effects of disease, injury, and degenerative conditions. Health care shall include mental health care;

(5) Health care decision shall include consent, refusal of consent, or withdrawal of consent to health care. Health care decision shall not include (a) the withdrawal or withholding of routine care necessary to maintain patient comfort, (b) the withdrawal or withholding of the usual and typical provision of nutrition and hydration, or (c) the withdrawal or withholding of life-sustaining procedures or of artificially administered nutrition or hydration, except as provided by sections 30-3401 to 30-3432;

(6) Health care provider shall mean an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or professional practice and shall include all facilities defined in the Health Care Facility Licensure Act;

(7) Except as otherwise provided in section 30-4404 for an advance mental health care directive, incapable shall mean the inability to understand and appreciate the nature and consequences of health care decisions, including the benefits of, risks of, and alternatives to any proposed health care or the inability to communicate in any manner an informed health care decision;

(8) Life-sustaining procedure shall mean any medical procedure, treatment, or intervention that (a) uses mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function and (b) when applied to a person suffering from a terminal condition or who is in a persistent vegetative state, serves only to prolong the dying process. Life-sustaining procedure shall not include routine care necessary to maintain patient comfort or the usual and typical provision of nutrition and hydration;

(9) Mental health care shall include, but not be limited to, mental health care and treatment expressly provided for in the Advance Mental Health Care Directives Act;

(10) Persistent vegetative state shall mean a medical condition that, to a reasonable degree of medical certainty as determined in accordance with currently accepted medical standards, is characterized by a total and irreversible loss of consciousness and capacity for cognitive interaction with the environment and no reasonable hope of improvement;

(11) Power of attorney for health care shall mean a power of attorney executed in accordance with sections 30-3401 to 30-3432 which authorizes a designated attorney in fact to make health care decisions for the principal when the principal is incapable;

(12) Principal shall mean an adult who, when competent, confers upon another adult a power of attorney for health care;

(13) Reasonably available shall mean that a person can be contacted with reasonable efforts by an attending physician or another person acting on behalf of the attending physician;

(14) Terminal condition shall mean an incurable and irreversible medical condition caused by injury, disease, or physical illness which, to a reasonable degree of medical certainty, will result in death regardless of the continued application of medical treatment including life-sustaining procedures; and

(15) Usual and typical provision of nutrition and hydration shall mean delivery of food and fluids orally, including by cup, eating utensil, bottle, or drinking straw.

Source: Laws 1992, LB 696, § 2; Laws 2000, LB 819, § 66; Laws 2020, LB247, § 16.
Effective date November 14, 2020.

Cross References

Advance Mental Health Care Directives Act, see section 30-4401.
Health Care Facility Licensure Act, see section 71-401.

30-3405 Witness; disqualification; declaration.

(1)(a) The following shall not qualify to witness a power of attorney for health care: Any person who at the time of witnessing is the principal's spouse, parent, child, grandchild, sibling, presumptive heir, known devisee, attending physician, mental health treatment team member, romantic or dating partner, or attorney in fact; or an employee of a life or health insurance provider for the principal.

(b) No more than one witness may be an administrator or employee of a health care provider who is caring for or treating the principal.

(2) Each witness shall make the written declaration in substantially the form prescribed in section 30-3408.

Source: Laws 1992, LB 696, § 5; Laws 2020, LB247, § 17.
Effective date November 14, 2020.

30-3406 Attorney in fact; disqualification.

None of the following may serve as an attorney in fact:

(1) The attending physician or a member of the mental health treatment team of the principal;

(2) An employee of the attending physician or a member of the mental health treatment team of the principal who is unrelated to the principal by blood, marriage, or adoption;

(3) A person unrelated to the principal by blood, marriage, or adoption who is an owner, operator, or employee of a health care provider in or of which the principal is a patient or resident; and

(4) A person unrelated to the principal by blood, marriage, or adoption if, at the time of the proposed designation, he or she is presently serving as an attorney in fact for ten or more principals.

Source: Laws 1992, LB 696, § 6; Laws 2020, LB247, § 18.
Effective date November 14, 2020.

30-3408 Power of attorney; form; validity.

(1) A power of attorney for health care executed on or after September 9, 1993, shall be in a form which complies with sections 30-3401 to 30-3432 and may be in the form provided in this subsection.

POWER OF ATTORNEY FOR HEALTH CARE

I appoint, whose address is, and whose telephone number is, as my attorney in fact for health care. I appoint, whose address is, and whose telephone number is, as my successor attorney in fact for health care. I authorize my attorney in fact appointed by this document to make health care decisions for me when I am determined to be incapable of making my own health care decisions. I have read the warning which accompanies this document and understand the consequences of executing a power of attorney for health care.

I direct that my attorney in fact comply with the following instructions or limitations:

I direct that my attorney in fact comply with the following instructions on life-sustaining treatment: (optional)

I direct that my attorney in fact comply with the following instructions on artificially administered nutrition and hydration: (optional)

I HAVE READ THIS POWER OF ATTORNEY FOR HEALTH CARE. I UNDERSTAND THAT IT ALLOWS ANOTHER PERSON TO MAKE LIFE AND DEATH DECISIONS FOR ME IF I AM INCAPABLE OF MAKING SUCH DECISIONS. I ALSO UNDERSTAND THAT I CAN REVOKE THIS POWER OF ATTORNEY FOR HEALTH CARE AT ANY TIME BY NOTIFYING MY ATTORNEY IN FACT, MY PHYSICIAN, OR THE FACILITY IN WHICH I AM A PATIENT OR RESIDENT. I ALSO UNDERSTAND THAT I CAN REQUIRE IN THIS POWER OF ATTORNEY FOR HEALTH CARE THAT THE FACT OF MY INCAPACITY IN THE FUTURE BE CONFIRMED BY A SECOND PHYSICIAN.

.....

(Signature of person making designation/date)

DECLARATION OF WITNESSES

We declare that the principal is personally known to us, that the principal signed or acknowledged his or her signature on this power of attorney for health care in our presence, that the principal appears to be of sound mind and not under duress or undue influence, and that neither of us nor the principal's attending physician is the person appointed as attorney in fact by this document.

Witnessed By:

..... (Signature of Witness/Date) (Printed Name of Witness)

..... (Signature of Witness/Date) (Printed Name of Witness)

OR

State of Nebraska,)
)ss.
County of)

On this day of 20...., before me,, a notary public in and for County, personally came, personally to me known to be the identical person whose name is affixed to the above power of attorney for health care as principal, and I declare that he or she appears in sound mind and not under duress or undue influence, that he or she acknowledges the execution of the same to be his or her voluntary act and deed,

and that I am not the attorney in fact or successor attorney in fact designated by this power of attorney for health care.

Witness my hand and notarial seal at in such county the day and year last above written.

Seal Signature of Notary Public

(2) A power of attorney for health care may be included in a durable power of attorney drafted under the Nebraska Uniform Power of Attorney Act or in any other form if the power of attorney for health care included in such durable power of attorney or any other form fully complies with the terms of section 30-3404.

(3) A power of attorney for health care executed prior to January 1, 1993, shall be effective if it fully complies with the terms of section 30-3404.

(4) A power of attorney for health care which is executed in another state and is valid under the laws of that state shall be valid according to its terms.

(5) A power of attorney for health care may include an advance mental health care directive under the Advance Mental Health Care Directives Act.

Source: Laws 1992, LB 696, § 8; Laws 1993, LB 782, § 22; Laws 2004, LB 813, § 11; Laws 2012, LB1113, § 47; Laws 2020, LB247, § 19.
Effective date November 14, 2020.

Cross References

Advance Mental Health Care Directives Act, see section 30-4401.
Nebraska Uniform Power of Attorney Act, see section 30-4001.

30-3423 Attorney in fact; attending physician; health care provider; immunity.

(1) An attorney in fact shall not be guilty of any criminal offense, subject to any civil liability, or in violation of any professional oath or code of ethics or conduct for any action taken in good faith pursuant to a power of attorney for health care or an advance mental health care directive under the Advance Mental Health Care Directives Act.

(2) No attending physician or health care provider acting or declining to act in reliance upon the decision made by a person whom the attending physician or health care provider in good faith believes is the attorney in fact for health care shall be subject to criminal prosecution, civil liability, or professional disciplinary action. Nothing in sections 30-3401 to 30-3432, however, shall limit the liability of an attending physician or health care provider for a negligent act or omission in connection with the medical diagnosis, treatment, or care of the principal.

Source: Laws 1992, LB 696, § 23; Laws 1993, LB 782, § 27; Laws 2020, LB247, § 20.
Effective date November 14, 2020.

Cross References

Advance Mental Health Care Directives Act, see section 30-4401.

ARTICLE 38**NEBRASKA UNIFORM TRUST CODE**

PART 1—GENERAL PROVISIONS AND DEFINITIONS

Section

30-3805. (UTC 105) Default and mandatory rules.

30-3808. (UTC 108) Principal place of administration.

PART 6—REVOCABLE TRUSTS

30-3854. (UTC 602) Revocation or amendment of revocable trust.

30-3855. (UTC 603) Rights and duties.

PART 7—OFFICE OF TRUSTEE

30-3859. (UTC 703) Cotrustees.

PART 8—DUTIES AND POWERS OF TRUSTEE

30-3873. Repealed. Laws 2019, LB536, § 25.

30-3880. (UTC 815) General powers of trustee.

30-3881. (UTC 816) Specific powers of trustee.

30-3882. (UTC 817) Distribution upon termination.

PART 1—GENERAL PROVISIONS AND DEFINITIONS

30-3805 (UTC 105) Default and mandatory rules.

(UTC 105) (a) Except as otherwise provided in the terms of the trust, the Nebraska Uniform Trust Code governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of the code except:

(1) the requirements for creating a trust;

(2) subject to sections 30-4309, 30-4311, and 30-4312, the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) the power of the court to modify or terminate a trust under sections 30-3836 to 30-3842;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in sections 30-3846 to 30-3852;

(6) the power of the court under section 30-3858 to require, dispense with, or modify or terminate a bond;

(7) the power of the court under subsection (b) of section 30-3864 to adjust a trustee's compensation specified in the terms of the trust;

(8) the duty under subsection (a) of section 30-3878 to keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests, and to respond to the request of a qualified beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;

(9) the effect of an exculpatory term under section 30-3897;

(10) the rights under sections 30-3899 to 30-38,107 of a person other than a trustee or beneficiary;

(11) periods of limitation for commencing a judicial proceeding;

(12) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice;

(13) the subject matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 30-3814 and 30-3815;

(14) the power of a court under subdivision (a)(1) of section 30-3807; and

(15) the power of a court to review the action or the proposed action of the trustee for an abuse of discretion.

Source: Laws 2003, LB 130, § 5; Laws 2005, LB 533, § 37; Laws 2007, LB124, § 22; Laws 2019, LB536, § 20.

30-3808 (UTC 108) Principal place of administration.

(UTC 108) (a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction;

(2) all or part of the administration occurs in the designated jurisdiction; or

(3) a trust director's principal place of business is located in or a trust director is a resident of the designated jurisdiction.

(b) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(c) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (b) of this section, may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(d) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than sixty days before initiating the transfer. The notice of proposed transfer must include:

(1) the name of the jurisdiction to which the principal place of administration is to be transferred;

(2) the address and telephone number at the new location at which the trustee can be contacted;

(3) an explanation of the reasons for the proposed transfer;

(4) the date on which the proposed transfer is anticipated to occur; and

(5) the date, not less than sixty days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(e) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(f) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 30-3860.

Source: Laws 2003, LB 130, § 8; Laws 2019, LB536, § 21.

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.

30-3855 (UTC 603) Rights and duties.

(UTC 603) (a) To the extent a trust is revocable by a settlor, a trustee may follow a direction of the settlor that is contrary to the terms of the trust. To the extent a trust is revocable by a settlor in conjunction with a person other than a trustee or person holding an adverse interest, the trustee may follow a direction from the settlor and the other person holding the power to revoke even if the direction is contrary to the terms of the trust.

(b) While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(c) While the trust is irrevocable and during the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section and the duties of the trustee are owed exclusively to the holder of the power to the extent of the property subject to the power.

(d) While the trust is irrevocable and during the period the interest of any beneficiary not having a present interest may be terminated by the exercise of a power of appointment or other power, the duties of the trustee are owed exclusively to the holder of the power to the extent of the property subject to the power.

Source: Laws 2003, LB 130, § 55; Laws 2004, LB 999, § 27; Laws 2005, LB 533, § 43; Laws 2013, LB38, § 2; Laws 2019, LB536, § 22.

PART 7—OFFICE OF TRUSTEE

30-3859 (UTC 703) Cotrustees.

(UTC 703) (a) Cotrustees who are unable to reach a unanimous decision may act by majority decision, except that any cotrustee may act independently as provided in section 30-901.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(c) Subject to section 30-4312, a cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(f) Except as otherwise provided in subsection (g) of this section, a trustee who does not join in an action of another trustee is not liable for the action.

(g) Subject to section 30-4312, each trustee shall exercise reasonable care to:

- (1) prevent a cotrustee from committing a serious breach of trust; and
- (2) compel a cotrustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

Source: Laws 2003, LB 130, § 59; Laws 2019, LB55, § 4; Laws 2019, LB536, § 23.

PART 8—DUTIES AND POWERS OF TRUSTEE

30-3873 Repealed. Laws 2019, LB536, § 25.

30-3880 (UTC 815) General powers of trustee.

(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) The changes made to this section by Laws 2019, LB593, shall apply retroactively to August 30, 2015.

Source: Laws 2003, LB 130, § 80; Laws 2015, LB72, § 1; Laws 2017, LB268, § 4; Laws 2019, LB593, § 2.

30-3881 (UTC 816) Specific powers of trustee.

(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 merging, 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) The changes made to this section by Laws 2019, LB593, shall apply retroactively to August 30, 2015.

Source: Laws 2003, LB 130, § 81; Laws 2015, LB72, § 2; Laws 2017, LB268, § 5; Laws 2019, LB593, § 3.

Cross References

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.

(UTC 817) (a) 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) 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) The changes made to this section by Laws 2019, LB593, shall apply retroactively to August 30, 2015.

Source: Laws 2003, LB 130, § 82; Laws 2015, LB72, § 3; Laws 2017, LB268, § 6; Laws 2019, LB593, § 4.

ARTICLE 40

NEBRASKA UNIFORM POWER OF ATTORNEY ACT

PART 1—GENERAL PROVISIONS

Section

30-4020. Liability for refusal to accept acknowledged power of attorney.

PART 2—AUTHORITY

30-4031. Banks and other financial institutions.

PART 1—GENERAL PROVISIONS

30-4020 Liability for refusal to accept acknowledged power of attorney.

(1) Except as otherwise provided in subsection (2) of this section:

(a) A person shall either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of counsel under subsection

(4) of section 30-4019 no later than seven business days after presentation of the power of attorney for acceptance;

(b) If a person requests a certification, a translation, or an opinion of counsel under subsection (4) of section 30-4019, the person shall accept the power of attorney no later than five business days after receipt of the certification, translation, or opinion of counsel; and

(c) A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented, except as provided in section 30-4031.

(2) A person is not required to accept an acknowledged power of attorney if:

(a) The person is not otherwise required to engage in a transaction with the principal in the same circumstances;

(b) Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with state or federal law;

(c) The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;

(d) A request for a certification, a translation, or an opinion of counsel under subsection (4) of section 30-4019 is refused;

(e) The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under subsection (4) of section 30-4019 has been requested or provided;

(f) The person makes, or has actual knowledge that another person has made, a report to the local adult protective services office stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent;

(g) The person brought, or has actual knowledge that another person has brought, a judicial proceeding for construction of a power of attorney or review of the agent's conduct; or

(h) The power of attorney becomes effective upon the occurrence of an event or contingency, and neither a certification nor evidence of the occurrence of the event or contingency is presented to the person being asked to accept the power of attorney.

(3) A person may not refuse to accept an acknowledged power of attorney if any of the following applies:

(a) The person's reason for refusal is based exclusively upon the date the power of attorney was executed; or

(b) The person's refusal is based exclusively on a mandate that an additional or different power of attorney form must be used.

(4)(a) A person may bring an action or proceeding to mandate the acceptance of an acknowledged power of attorney.

(b) In any action or proceeding to mandate the acceptance of an acknowledged power of attorney or confirm the validity of an acknowledged power of attorney, a person found liable for refusing to accept such power of attorney is subject to:

(i) Liability to the principal and to the principal's heirs, assigns, and personal representative of the estate of the principal in the same manner as the person would be liable had the person refused to accept the authority of the principal to act on the principal's own behalf;

(ii) A court order mandating acceptance of the power of attorney; and

(iii) Liability for reasonable attorney's fees and costs incurred in such action or proceeding.

(c) In any action or proceeding in which a person's refusal to accept an acknowledged power of attorney in violation of this section prevents an agent from completing a transaction requested by the agent with respect to a security account as defined in section 30-2734, owned by the principal, such person, in addition to being subject to the provisions of subdivision (4)(b) of this section, is subject to:

(i) Economic damages of the principal proximately caused by the person's refusal to accept the acknowledged power of attorney and failure to comply with the instructions of the agent designated in such power of attorney with respect to such security account; and

(ii) Reasonable attorney's fees and costs incurred to seek damages resulting from such person's refusal to accept the acknowledged power of attorney and failure to comply with the instructions of such agent designated in the power of attorney with respect to the security account.

Source: Laws 2012, LB1113, § 20; Laws 2019, LB145, § 1; Laws 2019, LB146, § 1.

PART 2—AUTHORITY

30-4031 Banks and other financial institutions.

Unless the power of attorney otherwise provides, language in a power of attorney granting authority with respect to banks and other financial institutions authorizes the agent to:

(1) Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;

(2) Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;

(3) Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

(4) Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

(5) Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them;

(6) Enter a safe deposit box or vault and withdraw or add to the contents;

(7) Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(8) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due;

(9) Receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;

(10) Apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit;

(11) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution; and

(12) Execute such powers of attorney as may be required and necessary for interacting with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution so long as the terms and conditions in the financial institution's power of attorney are similar to those in the power of attorney granting authority, including the identification of the acting agent and the agent's successors. The execution of a financial institution's power of attorney document does not revoke the power of attorney document granting authority.

Source: Laws 2012, LB1113, § 31; Laws 2019, LB145, § 2.

ARTICLE 41

PUBLIC GUARDIANSHIP ACT

Section

30-4108. Advisory Council on Public Guardianship; duties; meetings; expenses.

30-4108 Advisory Council on Public Guardianship; duties; meetings; expenses.

(1) The council shall advise the Public Guardian on the administration of public guardianship and public conservatorship.

(2) The council shall meet at least four times per year and at other times deemed necessary to perform its functions upon the call of the chairperson. Members of the council shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 2014, LB920, § 8; Laws 2020, LB381, § 25.
Operative date January 1, 2021.

ARTICLE 43

NEBRASKA UNIFORM DIRECTED TRUST ACT

Section

30-4301. (UDTA 1) Act, how cited.

30-4302. (UDTA 2) Definitions.

30-4303. (UDTA 3) Application; principal place of administration.

30-4304. (UDTA 4) Common law and principles of equity.

30-4305. (UDTA 5) Exclusions.

30-4306. (UDTA 6) Powers of trust director.

Section

- 30-4307. (UDTA 7) Limitation on trust director.
 30-4308. (UDTA 8) Duty and liability of trust director.
 30-4309. (UDTA 9) Duty and liability of directed trustee.
 30-4310. (UDTA 10) Duty to provide information to trust director or trustee.
 30-4311. (UDTA 11) No duty to monitor, inform, or advise.
 30-4312. (UDTA 12) Application to cotrustee.
 30-4313. (UDTA 13) Limitation of action against trust director.
 30-4314. (UDTA 14) Defenses in action against trust director.
 30-4315. (UDTA 15) Jurisdiction over trust director.
 30-4316. (UDTA 16) Office of trust director.
 30-4317. (UDTA 17) Uniformity of application and construction.
 30-4318. (UDTA 18) Electronic records and signatures.
 30-4319. Date; applicability.

30-4301 (UDTA 1) Act, how cited.

(UDTA 1) Sections 30-4301 to 30-4319 shall be known and may be cited as the Nebraska Uniform Directed Trust Act.

Source: Laws 2019, LB536, § 1.

30-4302 (UDTA 2) Definitions.

(UDTA 2) In the Nebraska Uniform Directed Trust Act:

(1) Breach of trust includes a violation by a trust director or trustee of a duty imposed on that director or trustee by the terms of the trust, the Nebraska Uniform Directed Trust Act, or law of this state other than the Nebraska Uniform Directed Trust Act pertaining to trusts.

(2) Directed trust means a trust for which the terms of the trust grant a power of direction.

(3) Directed trustee means a trustee that is subject to a trust director's power of direction.

(4) Person means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(5) Power of direction means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee. The term includes a power over the investment, management, or distribution of trust property or other matters of trust administration, including, but not limited to, amendment, reform, or termination of the trust. The term excludes the powers described in subsection (b) of section 30-4305.

(6) Settlor has the same meaning as in section 30-3803.

(7) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States.

(8) Terms of a trust means:

(A) except as otherwise provided in subdivision (8)(B) of this section, the manifestation of the settlor's intent regarding a trust's provisions as:

- (i) expressed in the trust instrument; or
- (ii) established by other evidence that would be admissible in a judicial proceeding; or

(B) the trust's provisions as established, determined, or amended by:

- (i) a trustee or trust director in accordance with applicable law;
- (ii) court order; or
- (iii) a nonjudicial settlement agreement under section 30-3811.

(9) Trust director means a person that is granted a power of direction by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee. The person is a trust director whether or not the terms of the trust refer to the person as a trust director and whether or not the person is a beneficiary or settlor of the trust.

- (10) Trustee has the same meaning as in section 30-3803.

Source: Laws 2019, LB536, § 2.

30-4303 (UDTA 3) Application; principal place of administration.

(UDTA 3) The Nebraska Uniform Directed Trust Act applies to a trust, whenever created, that has its principal place of administration in this state, subject to the following rules:

(1) If the trust was created before September 7, 2019, the Nebraska Uniform Directed Trust Act applies only to a decision or action occurring on or after September 7, 2019.

(2) If the principal place of administration of the trust is changed to this state on or after September 7, 2019, the Nebraska Uniform Directed Trust Act applies only to a decision or action occurring on or after the date of the change.

Source: Laws 2019, LB536, § 3.

30-4304 (UDTA 4) Common law and principles of equity.

(UDTA 4) The common law and principles of equity supplement the Nebraska Uniform Directed Trust Act, except to the extent modified by the Nebraska Uniform Directed Trust Act or law of this state other than the Nebraska Uniform Directed Trust Act.

Source: Laws 2019, LB536, § 4.

30-4305 (UDTA 5) Exclusions.

(UDTA 5) (a) In this section, power of appointment means a power that enables a person acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over trust property.

(b) The Nebraska Uniform Directed Trust Act does not apply to a:

- (1) power of appointment;
- (2) power to appoint or remove a trustee or trust director;
- (3) power of a settlor over a trust to the extent the settlor has a power to revoke the trust;
- (4) power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of:
 - (A) the beneficiary; or
 - (B) the beneficial interest of another beneficiary represented by the beneficiary under sections 30-3822 to 30-3826 with respect to the exercise or nonexercise of the power; or
- (5) power over a trust if:

(A) the terms of the trust provide that the power is held in a nonfiduciary capacity; and

(B) the power must be held in a nonfiduciary capacity to achieve the settlor's tax objectives under the Internal Revenue Code of 1986 as defined in section 49-801.01.

(c) Unless the terms of a trust provide otherwise, a power granted to a person to designate a recipient of an ownership interest in or power of appointment over trust property which is exercisable while the person is not serving as a trustee is a power of appointment and not a power of direction.

Source: Laws 2019, LB536, § 5.

30-4306 (UDTA 6) Powers of trust director.

(UDTA 6) (a) Subject to section 30-4307, the terms of a trust may grant a power of direction to a trust director.

(b) Unless the terms of a trust provide otherwise:

(1) a trust director may exercise any further power appropriate to the exercise or nonexercise of a power of direction granted to the trust director under subsection (a) of this section; and

(2) trust directors with joint powers must act by majority decision.

(c) A power of direction includes only those powers granted by the terms of the trust and further powers pursuant to subdivision (b)(1) of this section must be appropriate to the exercise or nonexercise of such power of direction granted by the terms of the trust.

Source: Laws 2019, LB536, § 6.

30-4307 (UDTA 7) Limitation on trust director.

(UDTA 7) A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power under subdivision (b)(1) of section 30-4306 regarding:

(1) a payback provision in the terms of a trust necessary to comply with the medicaid reimbursement requirements of section 68-919; and

(2) a charitable interest in the trust, including notice regarding the interest to the Attorney General.

Source: Laws 2019, LB536, § 7.

30-4308 (UDTA 8) Duty and liability of trust director.

(UDTA 8) (a) Subject to subsection (b) of this section, with respect to a power of direction or further power under subdivision (b)(1) of section 30-4306:

(1) a trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:

(A) if the power is held individually, as a sole trustee in a like position and under similar circumstances; or

(B) if the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances; and

(2) the terms of the trust may vary the director's duty or liability to the same extent the terms of the trust could vary the duty or liability of a trustee in a like position and under similar circumstances.

(b) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law other than the Nebraska Uniform Directed Trust Act to provide health care in the ordinary course of the director's business or practice of a profession, to the extent the director acts in that capacity, the director has no duty or liability under the Nebraska Uniform Directed Trust Act.

(c) The terms of a trust may impose a duty or liability on a trust director in addition to the duties and liabilities under this section.

Source: Laws 2019, LB536, § 8.

30-4309 (UDTA 9) Duty and liability of directed trustee.

(UDTA 9) (a) Subject to subsections (b) and (c) of this section, a directed trustee shall take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or further power under subdivision (b)(1) of section 30-4306, and the trustee is not liable for the action.

(b) A directed trustee must not comply with a trust director's exercise or nonexercise of a power of direction or further power under subdivision (b)(1) of section 30-4306 to the extent that by complying the trustee would engage in willful misconduct.

(c) A directed trustee must determine that the trust director's exercise of power of direction under subsection (a) of section 30-4306 or appropriation of further power under subsection (b) of section 30-4306 is granted by the terms of the trust pursuant to subsection (c) of section 30-4306.

(d) An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if:

- (1) the breach involved the trustee's or other director's willful misconduct;
- (2) the release was induced by improper conduct of the trustee or other director in procuring the release; or
- (3) at the time of the release, the director did not know the material facts relating to the breach.

(e) A directed trustee that has reasonable doubt about its duty under this section may petition the court for instructions.

(f) The terms of a trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities under this section.

Source: Laws 2019, LB536, § 9.

30-4310 (UDTA 10) Duty to provide information to trust director or trustee.

(UDTA 10) (a) Subject to section 30-4311, a trustee shall provide information to a trust director to the extent the information is reasonably related both to:

- (1) the powers or duties of the trustee; and
- (2) the powers or duties of the director.

(b) Subject to section 30-4311, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related both to:

- (1) the powers or duties of the director; and
- (2) the powers or duties of the trustee or other director.

(c) A trustee that acts in reliance on information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trustee engages in willful misconduct.

(d) A trust director that acts in reliance on information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trust director engages in willful misconduct.

Source: Laws 2019, LB536, § 10.

30-4311 (UDTA 11) No duty to monitor, inform, or advise.

(UDTA 11) (a) Unless the terms of a trust provide otherwise:

(1) a trustee does not have a duty to:

- (A) monitor a trust director; or
- (B) inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the director; and

(2) by taking an action described in subdivision (a)(1) of this section, a trustee does not assume the duty excluded by such subdivision.

(b) Unless the terms of a trust provide otherwise:

(1) a trust director does not have a duty to:

- (A) monitor a trustee or another trust director; or
- (B) inform or give advice to a settlor, beneficiary, trustee, or another trust director concerning an instance in which the director might have acted differently than a trustee or another trust director; and

(2) by taking an action described in subdivision (b)(1) of this section, a trust director does not assume the duty excluded by such subdivision.

Source: Laws 2019, LB536, § 11.

30-4312 (UDTA 12) Application to cotrustee.

(UDTA 12) The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that in a directed trust a directed trustee is relieved from duty and liability with respect to a trust director's power of direction under sections 30-4309 to 30-4311.

Source: Laws 2019, LB536, § 12.

30-4313 (UDTA 13) Limitation of action against trust director.

(UDTA 13) (a) An action against a trust director for breach of trust must be commenced within the same limitation period as under section 30-3894 for an action for breach of trust against a trustee in a like position and under similar circumstances.

(b) A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have under section 30-3894 in an action for breach of trust against a trustee in a like position and under similar circumstances.

Source: Laws 2019, LB536, § 13.

30-4314 (UDTA 14) Defenses in action against trust director.

(UDTA 14) In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

Source: Laws 2019, LB536, § 14.

30-4315 (UDTA 15) Jurisdiction over trust director.

(UDTA 15) (a) By accepting appointment as a trust director of a trust subject to the Nebraska Uniform Directed Trust Act, the director submits to personal jurisdiction of the courts of this state regarding any matter related to a power or duty of the director.

(b) This section does not preclude other methods of obtaining jurisdiction over a trust director.

Source: Laws 2019, LB536, § 15.

30-4316 (UDTA 16) Office of trust director.

(UDTA 16) Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a trust director regarding the following matters:

- (1) acceptance under section 30-3857;
- (2) giving of bond to secure performance under section 30-3858;
- (3) reasonable compensation under section 30-3864;
- (4) resignation under section 30-3861;
- (5) removal under section 30-3862; and
- (6) vacancy and appointment of successor under section 30-3860.

Source: Laws 2019, LB536, § 16.

30-4317 (UDTA 17) Uniformity of application and construction.

(UDTA 17) In applying and construing the Nebraska Uniform Directed Trust Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2019, LB536, § 17.

30-4318 (UDTA 18) Electronic records and signatures.

(UDTA 18) The provisions of the Nebraska Uniform Directed Trust Act governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7002, as such section existed on January 1 immediately preceding January 1, 2005,

and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

Source: Laws 2019, LB536, § 18.

30-4319 Date; applicability.

(a) Except as otherwise provided in the Nebraska Uniform Directed Trust Act, on January 1, 2021:

(1) the Nebraska Uniform Directed Trust Act applies to all trusts created before, on, or after January 1, 2021;

(2) the Nebraska Uniform Directed Trust Act applies to all judicial proceedings concerning trust directors, trustees, and cotrustees commenced on or after January 1, 2021;

(3) the Nebraska Uniform Directed Trust Act applies to judicial proceedings concerning trusts commenced before January 1, 2021, unless the court finds that application of a particular provision of the Nebraska Uniform Directed Trust Act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of the Nebraska Uniform Directed Trust Act does not apply and the superseded law applies; and

(4) an act done before January 1, 2021, is not affected by the Nebraska Uniform Directed Trust Act.

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2021, that statute continues to apply to the right even if it has been repealed or superseded.

Source: Laws 2019, LB536, § 19.

ARTICLE 44

ADVANCE MENTAL HEALTH CARE DIRECTIVES ACT

Section

30-4401. Act, how cited.

30-4402. Legislative findings; act; purposes.

30-4403. Advance mental health care directive; use; legislative declarations; right of individual.

30-4404. Terms, defined.

30-4405. Advance mental health care directive; requirements; irrevocable, when; witnesses; release authorization form.

30-4406. Instructions and preferences; binding; matters addressed; limitation.

30-4407. Expiration; revocation.

30-4408. Self-binding arrangement for mental health care; advance consent to inpatient treatment or administration of psychotropic medication; requirements.

30-4409. Activation.

30-4410. Attorney in fact; authority.

30-4411. Principal who has capacity; contemporaneous preferences; effect; conflicting documents; which controls.

30-4412. Inpatient treatment facility; principal refuses admission; facility; duties.

30-4413. Psychotropic medication; administration after refusal; conditions.

30-4414. Health care professional; immunity.

30-4415. Form; department powers and duties.

30-4401 Act, how cited.

Sections 30-4401 to 30-4415 shall be known and may be cited as the Advance Mental Health Care Directives Act.

Source: Laws 2020, LB247, § 1.

Effective date November 14, 2020.

30-4402 Legislative findings; act; purposes.

(1) The Legislature finds that:

(a) Issues implicated in advance planning for end-of-life care are distinct from issues implicated in advance planning for mental health care;

(b) Mental illness can be episodic and include periods of incapacity which obstruct an individual's ability to give informed consent and impede the individual's access to mental health care;

(c) An acute mental health episode can induce an individual to refuse treatment when the individual would otherwise consent to treatment if the individual's judgment were unimpaired;

(d) An individual may lose capacity without meeting the criteria for civil commitment in Nebraska; and

(e) An individual with mental illness has the same right to plan in advance for treatment as an individual planning for end-of-life care.

(2) The purposes of the Advance Mental Health Care Directives Act are to:

(a) Facilitate advance planning to help (i) prevent unnecessary involuntary commitment and incarceration, (ii) improve patient safety and health, (iii) improve mental health care, and (iv) enable an individual to exercise control over such individual's mental health treatment; and

(b) Protect patient safety, autonomy, and health by allowing an individual to create an advance mental health care directive to instruct and direct the individual's mental health care.

Source: Laws 2020, LB247, § 2.

Effective date November 14, 2020.

30-4403 Advance mental health care directive; use; legislative declarations; right of individual.

(1) The Legislature hereby declares that an advance mental health care directive can only accomplish the purposes stated in section 30-4402 if an individual may use an advance mental health care directive to:

(a) Set forth instructions for any foreseeable mental health care when the individual loses capacity to make decisions regarding such mental health care, including, but not limited to, consenting to inpatient mental health treatment, psychotropic medication, or electroconvulsive therapy;

(b) Dictate whether the directive is revocable during periods of incapacity and provide consent to treatment despite illness-induced refusals;

(c) Choose the standard by which the directive becomes active; and

(d) In compliance with the federal Health Insurance Portability and Accountability Act of 1996, include in the directive a release authorization form stating the names of persons to whom information regarding the mental health treatment of the principal may be disclosed during the time the directive is activated, including, but not limited to, health care professionals, mental health

care professionals, family, friends, and other interested persons with whom treatment providers are allowed to communicate if the principal loses capacity.

(2) An individual with capacity has the right to control decisions relating to the individual's mental health care unless subject to a court order involving mental health care under any other provision of law.

Source: Laws 2020, LB247, § 3.

Effective date November 14, 2020.

30-4404 Terms, defined.

For purposes of the Advance Mental Health Care Directives Act:

(1) Activation means the point at which an advance mental health care directive is used as the basis for decisionmaking as provided in section 30-4409;

(2) Attorney in fact means an individual designated under a power of attorney for health care to make mental health care decisions for a principal;

(3)(a) Capacity means having both (i) the ability to understand and appreciate the nature and consequences of mental health care decisions, including the benefits and risks of each, and alternatives to any proposed mental health treatment, and to reach an informed decision, and (ii) the ability to communicate in any manner such mental health care decision.

(b) An individual's capacity is evaluated in relation to the demands of a particular mental health care decision;

(4) Principal means an individual who is nineteen years of age or older with capacity who provides instructions, preferences, or both instructions and preferences for any foreseeable mental health care in an advance mental health care directive; and

(5) Relative means the spouse, child, parent, sibling, grandchild, or grandparent, by blood, marriage, or adoption, of an individual.

Source: Laws 2020, LB247, § 4.

Effective date November 14, 2020.

30-4405 Advance mental health care directive; requirements; irrevocable, when; witnesses; release authorization form.

(1) An advance mental health care directive shall:

(a) Be in writing;

(b) Be dated and signed by the principal or, subject to subsection (5) of this section, another individual acting at the direction of the principal if the principal is physically unable to sign. The attorney in fact of the principal may not sign the directive for the principal;

(c) State whether the principal wishes to be able to revoke the directive at any time or whether the directive remains irrevocable during periods of incapacity. Failure to clarify whether the directive is revocable does not render it unenforceable. If the directive fails to state whether it is revocable or irrevocable, the principal may revoke it at any time;

(d) State that the principal affirms that the principal is aware of the nature of the directive and signs the directive freely and voluntarily; and

(e)(i) Be signed in the presence of a notary public who is not the attorney in fact of the principal; or

(ii) Be witnessed in writing by at least two disinterested adults as provided in subsections (4) and (5) of this section.

(2) An advanced mental health care directive shall be valid upon execution.

(3) To be irrevocable during periods of incapacity, the directive shall state that the directive remains irrevocable during periods of incapacity.

(4) A witness shall not be:

(a) The principal's attending physician or a member of the principal's mental health treatment team at the time of executing the directive;

(b) The principal's spouse, parent, child, grandchild, sibling, presumptive heir, or known devisee at the time of the witnessing;

(c) In a romantic or dating relationship with the principal;

(d) The attorney in fact of the principal or a person designated to make mental health care decisions for the principal; or

(e) The owner, operator, employee, or relative of an owner or operator of a treatment facility at which the principal is receiving care.

(5) Each witness shall attest that:

(a) The witness was present when the principal signed the directive or, if the principal was physically unable to sign the directive, when another individual signed the directive as provided in subdivision (1)(b) of this section;

(b) The principal did not appear incapacitated or under undue influence or duress when the directive was signed; and

(c) The principal presented identification or the witness personally knew the principal when the directive was signed.

(6) A principal may, in compliance with the federal Health Insurance Portability and Accountability Act of 1996, include in the directive a release authorization form stating the name of persons to whom information regarding the mental health treatment of the principal may be disclosed during the time the directive is activated, including, but not limited to, health care professionals, mental health care professionals, family, friends, and other interested persons with whom treatment providers are allowed to communicate if the principal loses capacity.

Source: Laws 2020, LB247, § 5.

Effective date November 14, 2020.

30-4406 Instructions and preferences; binding; matters addressed; limitation.

(1) Except as provided in subsection (2) of this section, in an advance mental health care directive, a principal may issue instructions, preferences, or both instructions and preferences concerning the principal's mental health treatment. If the principal has designated an attorney in fact under a power of attorney for health care, the advance mental health care directive shall be binding on the principal's attorney in fact. The instructions and preferences may address matters including, but not limited to:

(a) Consent to or refusal of specific types of mental health treatment, such as inpatient mental health treatment, psychotropic medication, or electroconvulsive therapy. Consent to electroconvulsive therapy must be express;

(b) Treatment facilities and care providers;

(c) Alternatives to hospitalization if twenty-four-hour care is deemed necessary;

(d) Physicians who will provide treatment;

(e) Medications for psychiatric treatment;

(f) Emergency interventions, including seclusion, restraint, or medication;

(g) The provision of trauma-informed care and treatment;

(h) In compliance with the federal Health Insurance Portability and Accountability Act of 1996, a release authorization form stating the name of persons to whom information regarding the mental health treatment of the principal may be disclosed during the time the directive is activated, including persons who should be notified immediately of admission to an inpatient facility;

(i) Individuals who should be prohibited from visitation; and

(j) Other instructions or preferences regarding mental health care.

(2) A principal may not consent to or authorize an attorney in fact to consent to psychosurgery in a directive. If such consent or authorization is expressed in the directive, this does not revoke the entire directive, but such a provision is unenforceable.

Source: Laws 2020, LB247, § 6.

Effective date November 14, 2020.

30-4407 Expiration; revocation.

(1) An advance mental health care directive, including an irrevocable advance mental health care directive, shall remain in effect until it expires according to its terms or until it is revoked by the principal, whichever is earlier.

(2) A principal may revoke the directive even if the principal is incapacitated unless the principal has made the directive irrevocable during periods of incapacity pursuant to subsection (3) of section 30-4405.

(3) A principal with capacity or a principal without capacity who did not make the directive irrevocable during periods of incapacity may revoke the directive by:

(a) A written statement revoking the directive; or

(b) A subsequent directive that revokes the original directive. If the subsequent directive does not revoke the original directive in its entirety, only inconsistent provisions in the original directive are revoked.

(4) When a principal with capacity consents to treatment that is different than the treatment requested in the directive or refuses treatment that the principal requested in the directive, this consent or refusal does not revoke the entire directive but is a waiver of the inconsistent provision.

Source: Laws 2020, LB247, § 7.

Effective date November 14, 2020.

30-4408 Self-binding arrangement for mental health care; advance consent to inpatient treatment or administration of psychotropic medication; requirements.

(1) A principal has a right to form a self-binding arrangement for mental health care in an advance mental health care directive. A self-binding arrange-

ment allows the principal to obtain mental health treatment in the event that an acute mental health episode renders the principal incapacitated and induces the principal to refuse treatment.

(2) To provide advance consent to inpatient treatment despite the principal's illness-induced refusal, a principal shall, in such directive:

(a) Make the directive irrevocable pursuant to subsection (3) of section 30-4405; and

(b) Consent to admission to an inpatient treatment facility.

(3) To provide advance consent to administration of psychotropic medication despite the principal's illness-induced refusal of medication, a principal shall, in such directive:

(a) Make the directive irrevocable pursuant to subsection (3) of section 30-4405; and

(b) Consent to administration of psychotropic medication.

Source: Laws 2020, LB247, § 8.

Effective date November 14, 2020.

30-4409 Activation.

(1) Unless a principal designates otherwise in the advance mental health care directive, a directive becomes active when the principal loses capacity. Activation is the point at which the directive shall be used as the basis for decision-making and shall dictate mental health treatment of the principal.

(2) The principal may designate in the directive an activation standard other than incapacity by describing the circumstances under which the directive becomes active.

Source: Laws 2020, LB247, § 9.

Effective date November 14, 2020.

30-4410 Attorney in fact; authority.

(1) Except as otherwise provided in subsection (2) of this section, a specific grant of authority to an attorney in fact to consent to the principal's inpatient mental health treatment or psychotropic medication is not required to convey authority to the attorney in fact to consent to such treatments. An attorney in fact may consent to such treatments for the principal if the principal's written grant of authority in the principal's advance mental health care directive is sufficiently broad to encompass these decisions.

(2) When an incapacitated principal refuses inpatient mental health treatment or psychotropic medication, the principal's attorney in fact only has the authority to consent to such treatments for the principal if the principal's directive is irrevocable and expressly authorizes the attorney in fact to consent to the applicable treatment. An attorney in fact shall only have the authority to consent to electroconvulsive therapy for the principal if the principal's directive is irrevocable and expressly authorizes the attorney in fact to consent to electroconvulsive therapy.

(3) An attorney in fact's decisions for the principal must be in good faith and consistent with the principal's instructions expressed in the principal's directive. If the directive fails to address an issue, the attorney in fact shall make decisions in accordance with the principal's instructions or preferences other-

wise known to the attorney in fact. If the attorney in fact does not know the principal's instructions or preferences, the attorney in fact shall make decisions in the best interests of the principal.

(4) If the principal grants the attorney in fact authority to make decisions for the principal in circumstances in which the principal still has capacity, the principal's decisions when the principal has capacity shall nonetheless override the attorney in fact's decisions.

Source: Laws 2020, LB247, § 10.
Effective date November 14, 2020.

30-4411 Principal who has capacity; contemporaneous preferences; effect; conflicting documents; which controls.

(1) Despite activation, an advance mental health care directive, including an irrevocable directive, shall not prevail over contemporaneous preferences expressed by a principal who has capacity.

(2) If an individual has a power of attorney for health care and an advance mental health care directive and there is any conflict between the two documents, the advance mental health care directive controls with regard to any mental health care instructions or preferences.

Source: Laws 2020, LB247, § 11.
Effective date November 14, 2020.

30-4412 Inpatient treatment facility; principal refuses admission; facility; duties.

(1) If the principal forms a self-binding arrangement for treatment in an advance mental health care directive but then refuses admission to an inpatient treatment facility despite the directive's instructions to admit, the inpatient treatment facility shall respond as follows:

(a) The facility shall, as soon as practicable, obtain the informed consent of the principal's attorney in fact, if the principal has an attorney in fact;

(b) Two licensed physicians shall, within twenty-four hours after the principal's arrival at the facility, evaluate the principal to determine whether the principal has capacity and shall document in the principal's medical record a summary of findings, evaluations, and recommendations; and

(c) If the evaluating physicians determine the principal lacks capacity, the principal shall be admitted into the inpatient treatment facility pursuant to the principal's directive.

(2) After twenty-one days following the date of admission, if the principal has not regained capacity or has regained capacity but refuses to consent to remain for additional treatment, the facility shall dismiss the principal from the facility's care and the principal shall be released during daylight hours or to the care of an individual available only during nondaylight hours. This subsection does not apply if the principal is detained pursuant to involuntary commitment standards.

(3) A principal may specify in the advance mental health care directive a shorter amount of time than twenty-one days.

Source: Laws 2020, LB247, § 12.
Effective date November 14, 2020.

30-4413 Psychotropic medication; administration after refusal; conditions.

If a principal with an irrevocable advance mental health care directive consenting to inpatient treatment refuses psychotropic medication through words or actions, psychotropic medication may only be administered by or under the immediate direction of a licensed psychiatrist, and only if:

- (1) The principal expressly consented to psychotropic medication in the principal’s irrevocable directive;
- (2) The principal’s attorney in fact, if the principal has an attorney in fact, consents to psychotropic medication; and
- (3) Two of the following health care professionals recommend, in writing, treatment with the specific psychotropic medication: A licensed psychiatrist, physician, physician assistant, or advanced practice registered nurse or any other health care professional licensed to diagnose illnesses and prescribe drugs for mental health care.

Source: Laws 2020, LB247, § 13.
Effective date November 14, 2020.

30-4414 Health care professional; immunity.

(1) A health care professional acting or declining to act, in accord with reasonable medical standards, in good faith reliance upon the principal’s advance mental health care directive, and, if the principal has an attorney in fact, in reliance upon the decision made by a person whom the health care professional in good faith believes is the attorney in fact acting pursuant to the advance mental health care directive, shall not be subject to criminal prosecution, civil liability, or discipline for unprofessional conduct for so acting or declining to act.

(2) In the absence of knowledge of the revocation of an advance mental health care directive, a health care professional who acts or declines to act based upon the advance mental health care directive and in accord with reasonable medical standards shall not be subject to criminal prosecution, civil liability, or discipline for unprofessional conduct for so acting or declining to act.

(3) Nothing in the Advance Mental Health Care Directives Act shall limit the liability of an attorney in fact or a health care professional for a negligent act or omission.

Source: Laws 2020, LB247, § 14.
Effective date November 14, 2020.

30-4415 Form; department powers and duties.

(1) An advance mental health care directive shall be in a form that complies with the Advance Mental Health Care Directives Act and may be in the form provided in this subsection.

ADVANCE MENTAL HEALTH CARE DIRECTIVE

I, being an adult nineteen years of age or older and of sound mind, freely and voluntarily make this directive for mental health care to be followed if it is determined that my ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health care. “Mental health

care" includes, but is not limited to, treatment of mental illness with psychotropic medication, admission to and retention in a treatment facility for a period up to 21 days, or electroconvulsive therapy.

I understand that I may become incapable of giving or withholding informed consent for mental health care due to the symptoms of a diagnosed mental disorder. These symptoms may include, but not be limited to:

.....

PSYCHOTROPIC MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health care, my wishes regarding psychotropic medications, including classes of medications if appropriate, are as follows (check one or both of the following, if applicable):

I consent to the administration of the following medications:

.....

I do not consent to the administration of the following medications:

.....

Conditions or limitations, if any:

.....

ADMISSION TO AND RETENTION IN FACILITY

If I become incapable of giving or withholding informed consent for mental health care, my wishes regarding admission to and retention in a health care facility for mental health care are as follows (check one of the following, if applicable):

I consent to being admitted to a treatment facility for mental health care.

I do not consent to being admitted to a treatment facility for mental health care.

This directive cannot, by law, provide consent to retain me in a treatment facility for more than 21 days.

Conditions or limitations, if any:

.....

ELECTROCONVULSIVE THERAPY

If I become incapable of giving or withholding informed consent for mental health care, my wishes regarding electroconvulsive therapy are as follows (check one of the following, if applicable):

I consent to the administration of electroconvulsive therapy.

I do not consent to the administration of electroconvulsive therapy.

Conditions or limitations, if any:

.....

DESIGNATION OF IRREVOCABILITY DURING INCAPACITY

If I become incapable of giving or withholding informed consent for mental health care, my advance mental health care directive remains irrevocable during such period of incapacity:

Yes

No

If yes, the directive is irrevocable during such period of incapacity with regard to:

[] Admission and retention in a treatment facility for mental health care for up to 21 days;

[] Psychotropic medication as follows:
.....;

[] Electroconvulsive therapy; or

[] All of the above.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This directive will not be valid unless it is signed in the presence of a notary public or signed by two qualified witnesses who are either personally known to you or verify your identity and who are present when you sign or acknowledge your signature.

SELECTION OF PHYSICIAN
(OPTIONAL)

If it becomes necessary to determine if I have become incapable of giving or withholding informed consent for mental health care, I choose of (address of licensed physician) to be one of the two licensed physicians who will determine whether I am incapable. If that licensed physician is unavailable, that physician's designee shall serve as one of the two licensed physicians who will determine whether I am incapable.

ADDITIONAL REFERENCES OR INSTRUCTIONS

.....
Conditions or limitations, if any:

.....

This document will continue in effect until you revoke it as described below or until a date you designate in this document. If you wish to have this document terminate on a certain date, please indicate:

.....
(Date of expiration of directive) (Signature of Principal)

.....
(Printed Name of Principal)

.....
(Date signed)

THIS DOCUMENT MUST BE SIGNED IN THE PRESENCE OF WITNESSES OR SIGNED IN THE PRESENCE OF A NOTARY PUBLIC. COMPLETE THE APPROPRIATE PORTION WHICH FOLLOWS:

AFFIRMATION OF WITNESSES

We affirm that the principal is personally known to us or the principal presented identification, that the principal signed this advance mental health

care directive in our presence or, if the principal was unable to sign the directive, the principal's designated representative signed the directive in our presence, that the principal did not appear to be incapacitated or under duress or undue influence, and that neither of us is:

- (a) The principal's attending physician or a member of the principal's mental health treatment team;
- (b) The principal's spouse, parent, child, grandchild, sibling, presumptive heir, or known devisee at the time of the witnessing;
- (c) In a romantic or dating relationship with the principal;
- (d) The attorney in fact of the principal or a person designated to make mental health care decisions for the principal; or
- (e) The owner, operator, employee, or relative of an owner or operator of a treatment facility at which the principal is receiving care.

Witnessed By:

..... (Signature of Witness) (Signature of Witness)
..... (Printed Name of Witness) (Printed Name of Witness)
..... (Date) (Date)

OR COMPLETE THE FOLLOWING PORTION IF THIS DOCUMENT IS SIGNED IN THE PRESENCE OF A NOTARY PUBLIC

State of Nebraska,)

)ss.

County of)

On this day of 20...., before me,, a notary public in and for County, personally came, personally to me known to be the identical person whose name is affixed to the above advance mental health care directive as principal, and I declare that such person appears in sound mind and not under duress or undue influence, that such person acknowledges the execution of the same to be such person's voluntary act and deed, and that I am not the attorney in fact of the principal designated by any power of attorney for health care.

Witness my hand and notarial seal at in such county the day and year last above written.

..... Seal Signature of Notary Public
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NOTICE TO PERSON MAKING AN ADVANCE MENTAL HEALTH CARE DIRECTIVE

This is an important legal document. It creates an advance mental health care directive. Before signing this document, you should know these important facts:

This document allows you to make decisions in advance about mental health care, including administration of psychotropic medication, short-term (up to 21

days) admission to a treatment facility, and use of electroconvulsive therapy. The instructions that you include in this advance mental health care directive will be followed only if you are incapable of making treatment decisions. Otherwise, you will be considered capable to give or withhold consent for the treatments.

If you have an attorney in fact appointed under a power of attorney for health care, your attorney in fact has a duty to act consistent with your desires as stated in this document or, if your desires are not stated or otherwise made known to the attorney in fact, to act in a manner consistent with what your attorney in fact in good faith believes to be in your best interest. The person has the right to withdraw from acting as your attorney in fact at any time.

You have the right to revoke this document in whole or in part at any time you have been determined to be capable of giving or withholding informed consent for mental health care. A revocation is effective when it is communicated to your attending health care professional in writing and is signed by you. The revocation may be in a form similar to the following:

REVOCATION

I,, knowingly and voluntarily revoke my advance mental health care directive as indicated (check one of the following):

- [] I revoke my entire directive.
[] I revoke the following portion or portions of my directive:

.....
.....
(Signature of Principal)
.....
(Printed Name of Principal)
.....
(Date)

EVALUATION BY HEALTH CARE PROFESSIONAL (OPTIONAL)

I,, have evaluated the principal and determined that the principal is capable of giving or withholding informed consent for mental health care.

.....
(Signature of health care professional)
.....
(Printed Name of health care professional)
.....
(Date)

(2) The Department of Health and Human Services may adopt and promulgate rules and regulations to provide information to the public regarding the Advance Mental Health Care Directives Act. The rules and regulations may include information relating to the need to review and update an advance mental health care directive in a timely manner and the creation of a wellness recovery action plan upon dismissal from a treatment facility for ongoing mental health issues and rehabilitation goals. The department shall publish the form in this section on its web site for use by the public.

Source: Laws 2020, LB247, § 15.
Effective date November 14, 2020.

ARTICLE 45

UNIFORM TRUST DECANTING ACT

Section

- 30-4501. Act, how cited.
- 30-4502. Definitions.
- 30-4503. Scope.
- 30-4504. Fiduciary duty.
- 30-4505. Application; governing law.
- 30-4506. Reasonable reliance.
- 30-4507. Notice; exercise of decanting power.
- 30-4508. Representation.
- 30-4509. Court involvement.
- 30-4510. Formalities.
- 30-4511. Decanting power under expanded distributive discretion.
- 30-4512. Decanting power under limited distributive discretion.
- 30-4513. Trust for beneficiary with disability.
- 30-4514. Protection of charitable interest.
- 30-4515. Trust limitation on decanting.
- 30-4516. Change in compensation.
- 30-4517. Relief from liability and indemnification.
- 30-4518. Removal or replacement of authorized fiduciary.
- 30-4519. Tax-related limitations.
- 30-4520. Duration of second trust.
- 30-4521. Need to distribute not required.
- 30-4522. Saving provision.
- 30-4523. Trust for care of animal.
- 30-4524. Terms of second trust.
- 30-4525. Settlor.
- 30-4526. Later-discovered property.
- 30-4527. Obligations.
- 30-4528. Uniformity of application and construction.
- 30-4529. Relation to federal Electronic Signatures in Global and National Commerce Act.

30-4501 Act, how cited.

Sections 30-4501 to 30-4529 shall be known and may be cited as the Uniform Trust Decanting Act.

Source: Laws 2020, LB808, § 11.

Operative date November 14, 2020.

30-4502 Definitions.

In the Uniform Trust Decanting Act:

- (1) Appointive property means the property or property interest subject to a power of appointment.
- (2) Ascertainable standard has the same meaning as in section 30-3803.
- (3) Authorized fiduciary means:
 - (A) a trustee or other fiduciary, other than a settlor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries;
 - (B) a special fiduciary appointed under section 30-4509; or
 - (C) a special-needs fiduciary under section 30-4513.
- (4) Beneficiary means a person that:
 - (A) has a present or future, vested or contingent, beneficial interest in a trust;

(B) holds a power of appointment over trust property; or

(C) is an identified charitable organization that will or may receive distributions under the terms of the trust.

(5) Charitable interest means an interest in a trust which:

(A) is held by an identified charitable organization and makes the organization a qualified beneficiary;

(B) benefits only charitable organizations and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary; or

(C) is held solely for charitable purposes and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary.

(6) Charitable organization means:

(A) a person, other than an individual, organized and operated exclusively for charitable purposes; or

(B) a government or governmental subdivision, agency, or instrumentality, to the extent it holds funds exclusively for a charitable purpose.

(7) Charitable purpose has the same meaning as the description of a charitable trust in section 30-3831.

(8) Court means the court in this state having jurisdiction in matters relating to trusts.

(9) Current beneficiary means a beneficiary that on the date the beneficiary's qualification is determined is a distributee or permissible distributee of trust income or principal. The term includes the holder of a presently exercisable general power of appointment but does not include a person that is a beneficiary only because the person holds any other power of appointment.

(10) Decanting power or the decanting power means the power of an authorized fiduciary under the act to distribute property of a first trust to one or more second trusts or to modify the terms of the first trust.

(11) Expanded distributive discretion means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.

(12) First trust means a trust over which an authorized fiduciary may exercise the decanting power.

(13) First-trust instrument means the trust instrument for a first trust.

(14) General power of appointment means a power of appointment exercisable in favor of a powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(15) Jurisdiction has the same meaning as in section 30-3803.

(16) Person means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(17) Power of appointment means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

(18) Powerholder means a person in which a donor creates a power of appointment.

(19) Presently exercisable power of appointment means a power of appointment exercisable by the powerholder at the relevant time. The term:

(A) includes a power of appointment exercisable only after the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

- (i) the occurrence of the specified event;
- (ii) the satisfaction of the ascertainable standard; or
- (iii) the passage of the specified time; and

(B) does not include a power exercisable only at the powerholder's death.

(20) Qualified beneficiary has the same meaning as in section 30-3803.

(21) Reasonably definite standard means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of 26 U.S.C. 674(b)(5)(A), as such section existed on November 14, 2020, and any applicable regulations.

(22) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) Second trust means:

(A) a first trust after modification under the Uniform Trust Decanting Act; or

(B) a trust to which a distribution of property from a first trust is or may be made under the act.

(24) Second-trust instrument means the trust instrument for a second trust.

(25) Settlor, except as otherwise provided in section 30-4525, has the same meaning as in section 30-3803.

(26) Sign means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(27) State has the same meaning as in section 30-3803.

(28) Terms of the trust means:

(A) Except as otherwise provided in subdivision (B) of this subdivision, the manifestation of the settlor's intent regarding a trust's provisions as:

(i) expressed in the trust instrument; or

(ii) established by other evidence that would be admissible in a judicial proceeding; or

(B) the trust's provisions as established, determined, or amended by:

(i) a trustee or other person in accordance with applicable law;

(ii) a court order; or

(iii) a nonjudicial settlement agreement under section 30-3811.

(29) Trust instrument means a record executed by the settlor to create a trust or by any person to create a second trust which contains some or all of the terms of the trust, including any amendments.

Source: Laws 2020, LB808, § 12.

Operative date November 14, 2020.

30-4503 Scope.

(a) Except as otherwise provided in subsections (b) and (c) of this section, the Uniform Trust Decanting Act applies to an express trust that is irrevocable or revocable by the settlor only with the consent of the trustee or a person holding an adverse interest.

(b) The act does not apply to a trust held solely for charitable purposes.

(c) Subject to section 30-4515, a trust instrument may restrict or prohibit exercise of the decanting power.

(d) The act does not limit the power of a trustee, powerholder, or other person to distribute or appoint property in further trust or to modify a trust under the trust instrument, law of this state other than the act, common law, a court order, or a nonjudicial settlement agreement.

(e) The act does not affect the ability of a settlor to provide in a trust instrument for the distribution of the trust property or appointment in further trust of the trust property or for modification of the trust instrument.

Source: Laws 2020, LB808, § 13.

Operative date November 14, 2020.

30-4504 Fiduciary duty.

(a) In exercising the decanting power, an authorized fiduciary shall act in accordance with its fiduciary duties, including the duty to act in accordance with the purposes of the first trust.

(b) The Uniform Trust Decanting Act does not create or imply a duty to exercise the decanting power or to inform beneficiaries about the applicability of the act.

(c) Except as otherwise provided in a first-trust instrument, for purposes of the act and section 30-3866 and subsection (a) of section 38-3867, the terms of the first trust are deemed to include the decanting power.

Source: Laws 2020, LB808, § 14.

Operative date November 14, 2020.

30-4505 Application; governing law.

The Uniform Trust Decanting Act applies to a trust created before, on, or after November 14, 2020, which:

(1) has its principal place of administration in this state, including a trust whose principal place of administration has been changed to this state; or

(2) provides by its trust instrument that it is governed by the law of this state or is governed by the law of this state for the purpose of:

(A) administration, including administration of a trust whose governing law for purposes of administration has been changed to the law of this state;

(B) construction of terms of the trust; or

(C) determining the meaning or effect of terms of the trust.

Source: Laws 2020, LB808, § 15.

Operative date November 14, 2020.

30-4506 Reasonable reliance.

A trustee or other person that reasonably relies on the validity of a distribution of part or all of the property of a trust to another trust, or a modification of a trust, under the Uniform Trust Decanting Act, law of this state other than the act, or the law of another jurisdiction is not liable to any person for any action or failure to act as a result of the reliance.

Source: Laws 2020, LB808, § 16.

Operative date November 14, 2020.

30-4507 Notice; exercise of decanting power.

(a) In this section, a notice period begins on the day notice is given under subsection (c) of this section and ends fifty-nine days after the day notice is given.

(b) Except as otherwise provided in the Uniform Trust Decanting Act, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.

(c) Except as otherwise provided in subsection (f) of this section, an authorized fiduciary shall give notice in a record of the intended exercise of the decanting power not later than sixty days before the exercise to:

- (1) each settlor of the first trust, if living or then in existence;
- (2) each qualified beneficiary of the first trust;
- (3) each holder of a presently exercisable power of appointment over any part or all of the first trust;
- (4) each person that currently has the right to remove or replace the authorized fiduciary;
- (5) each other fiduciary of the first trust;
- (6) each fiduciary of the second trust;
- (7) each person acting as an advisor or protector of the first trust;
- (8) each person holding an adverse interest who has the power to consent to the revocation of the first trust; and
- (9) the Attorney General, if subsection (b) of section 30-4514 applies.

(d) An authorized fiduciary is not required to give notice under subsection (c) of this section to a person that is not known to the fiduciary or is known to the fiduciary but cannot be located by the fiduciary after reasonable diligence.

(e) A notice under subsection (c) of this section must:

- (1) specify the manner in which the authorized fiduciary intends to exercise the decanting power;
- (2) specify the proposed effective date for exercise of the power;
- (3) include a copy of the first-trust instrument; and
- (4) include a copy of all second-trust instruments.

(f) The decanting power may be exercised before expiration of the notice period under subsection (a) of this section if all persons entitled to receive notice waive the period in a signed record.

(g) The receipt of notice, waiver of the notice period, or expiration of the notice period does not affect the right of a person to file an application under section 30-4509 asserting that:

(1) an attempted exercise of the decanting power is ineffective because it did not comply with the act or was an abuse of discretion or breach of fiduciary duty; or

(2) section 30-4522 applies to the exercise of the decanting power.

(h) An exercise of the decanting power is not ineffective because of the failure to give notice to one or more persons under subsection (c) of this section if the authorized fiduciary acted with reasonable care to comply with subsection (c) of this section.

Source: Laws 2020, LB808, § 17.

Operative date November 14, 2020.

30-4508 Representation.

(a) Notice to a person with authority to represent and bind another person under a first-trust instrument or sections 30-3822 to 30-3826 has the same effect as notice given directly to the person represented.

(b) Consent of or waiver by a person with authority to represent and bind another person under a first-trust instrument or sections 30-3822 to 30-3826 is binding on the person represented unless the person represented objects to the representation before the consent or waiver otherwise would become effective.

(c) A person with authority to represent and bind another person under a first-trust instrument or sections 30-3822 to 30-3826 may file an application under section 30-4509 on behalf of the person represented.

(d) A settlor may not represent or bind a beneficiary for purposes of the Uniform Trust Decanting Act.

Source: Laws 2020, LB808, § 18.

Operative date November 14, 2020.

30-4509 Court involvement.

(a) On application of an authorized fiduciary, a person entitled to notice under subsection (c) of section 30-4507, a beneficiary, or with respect to a charitable interest the Attorney General or other person that has standing to enforce the charitable interest, the court may:

(1) provide instructions to the authorized fiduciary regarding whether a proposed exercise of the decanting power is permitted under the Uniform Trust Decanting Act and consistent with the fiduciary duties of the authorized fiduciary;

(2) appoint a special fiduciary and authorize the special fiduciary to determine whether the decanting power should be exercised under the act and to exercise the decanting power;

(3) approve an exercise of the decanting power;

(4) determine that a proposed or attempted exercise of the decanting power is ineffective because:

(A) after applying section 30-4522, the proposed or attempted exercise does not or did not comply with the act; or

(B) the proposed or attempted exercise would be or was an abuse of the fiduciary's discretion or a breach of fiduciary duty;

(5) determine the extent to which section 30-4522 applies to a prior exercise of the decanting power;

(6) provide instructions to the trustee regarding the application of section 30-4522 to a prior exercise of the decanting power; or

(7) order other relief to carry out the purposes of the act.

(b) On application of an authorized fiduciary, the court may approve:

(1) an increase in the fiduciary's compensation under section 30-4516; or

(2) a modification under section 30-4518 of a provision granting a person the right to remove or replace the fiduciary.

Source: Laws 2020, LB808, § 19.

Operative date November 14, 2020.

30-4510 Formalities.

An exercise of the decanting power must be made in a record signed by an authorized fiduciary. The signed record must, directly or by reference to the notice required by section 30-4507, identify the first trust and the second trust or trusts and state the property of the first trust being distributed to each second trust and the property, if any, that remains in the first trust.

Source: Laws 2020, LB808, § 20.

Operative date November 14, 2020.

30-4511 Decanting power under expanded distributive discretion.

(a) In this section:

(1) Noncontingent right means a right that is not subject to the exercise of discretion or the occurrence of a specified event that is not certain to occur. The term does not include a right held by a beneficiary if any person has discretion to distribute property subject to the right to any person other than the beneficiary or the beneficiary's estate.

(2) Presumptive remainder beneficiary means a qualified beneficiary other than a current beneficiary.

(3) Successor beneficiary means a beneficiary that is not a qualified beneficiary on the date the beneficiary's qualification is determined. The term does not include a person that is a beneficiary only because the person holds a nongeneral power of appointment.

(4) Vested interest means:

(A) a right to a mandatory distribution that is a noncontingent right as of the date of the exercise of the decanting power;

(B) a current and noncontingent right, annually or more frequently, to a mandatory distribution of income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(C) a current and noncontingent right, annually or more frequently, to withdraw income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(D) a presently exercisable general power of appointment; or

(E) a right to receive an ascertainable part of the trust property on the trust's termination which is not subject to the exercise of discretion or to the occurrence of a specified event that is not certain to occur.

(b) Subject to subsection (c) of this section and section 30-4514, an authorized fiduciary that has expanded distributive discretion over the principal of a first trust for the benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Subject to section 30-4513, in an exercise of the decanting power under this section, a second trust may not:

(1) include as a current beneficiary a person that is not a current beneficiary of the first trust, except as otherwise provided in subsection (d) of this section;

(2) include as a presumptive remainder beneficiary or successor beneficiary a person that is not a current beneficiary, presumptive remainder beneficiary, or successor beneficiary of the first trust, except as otherwise provided in subsection (d) of this section; or

(3) reduce or eliminate a vested interest.

(d) Subject to subdivision (3) of subsection (c) of this section and section 30-4514, in an exercise of the decanting power under this section, a second trust may be a trust created or administered under the law of any jurisdiction and may:

(1) retain a power of appointment granted in the first trust;

(2) omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;

(3) create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the authorized fiduciary has expanded distributive discretion to distribute principal to the beneficiary; and

(4) create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary.

(e) A power of appointment described in subdivisions (1) through (4) of subsection (d) of this section may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the beneficiaries of the first trust.

(f) If an authorized fiduciary has expanded distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has expanded distributive discretion.

Source: Laws 2020, LB808, § 21.

Operative date November 14, 2020.

30-4512 Decanting power under limited distributive discretion.

(a) In this section, limited distributive discretion means a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.

(b) An authorized fiduciary that has limited distributive discretion over the principal of the first trust for benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Under this section and subject to section 30-4514, a second trust may be created or administered under the law of any jurisdiction. Under this section, the second trusts, in the aggregate, must grant each beneficiary of the first trust beneficial interests which are substantially similar to the beneficial interests of the beneficiary in the first trust.

(d) A power to make a distribution under a second trust for the benefit of a beneficiary who is an individual is substantially similar to a power under the first trust to make a distribution directly to the beneficiary. A distribution is for the benefit of a beneficiary if:

- (1) the distribution is applied for the benefit of the beneficiary;
- (2) the beneficiary is under a legal disability or the trustee reasonably believes the beneficiary is incapacitated, and the distribution is made as permitted under the Nebraska Uniform Trust Code; or
- (3) the distribution is made as permitted under the terms of the first-trust instrument and the second-trust instrument for the benefit of the beneficiary.

(e) If an authorized fiduciary has limited distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has limited distributive discretion.

Source: Laws 2020, LB808, § 22.

Operative date November 14, 2020.

Cross References

Nebraska Uniform Trust Code, see section 30-3801.

30-4513 Trust for beneficiary with disability.

(a) In this section:

(1) Beneficiary with a disability means a beneficiary of a first trust who the special-needs fiduciary believes may qualify for governmental benefits based on disability, whether or not the beneficiary currently receives those benefits or is an individual who has been adjudicated incapacitated.

(2) Governmental benefits means financial aid or services from a state, federal, or other public agency.

(3) Special-needs fiduciary means, with respect to a trust that has a beneficiary with a disability:

(A) a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the principal of a first trust to one or more current beneficiaries;

(B) if no trustee or fiduciary has discretion under subdivision (3)(A) of this subsection, a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the income of the first trust to one or more current beneficiaries; or

(C) if no trustee or fiduciary has discretion under subdivisions (3)(A) and (B) of this subsection, a trustee or other fiduciary, other than a settlor, that is required to distribute part or all of the income or principal of the first trust to one or more current beneficiaries.

(4) Special-needs trust means a trust the trustee believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits.

(b) A special-needs fiduciary may exercise the decanting power under section 30-4511 over the principal of a first trust as if the fiduciary had authority to distribute principal to a beneficiary with a disability subject to expanded distributive discretion if:

(1) a second trust is a special-needs trust that benefits the beneficiary with a disability; and

(2) the special-needs fiduciary determines that exercise of the decanting power will further the purposes of the first trust.

(c) In an exercise of the decanting power under this section, the following rules apply:

(1) Notwithstanding subdivision (c)(2) of section 30-4511, the interest in the second trust of a beneficiary with a disability may:

(A) be a pooled trust as defined by medicaid law for the benefit of the beneficiary with a disability under 42 U.S.C. 1396p(d)(4)(C), as such section existed on November 14, 2020; or

(B) contain payback provisions complying with reimbursement requirements of medicaid law under 42 U.S.C. 1396p(d)(4)(A), as such section existed on November 14, 2020.

(2) Subdivision (c)(3) of section 30-4511 does not apply to the interests of the beneficiary with a disability.

(3) Except as affected by any change to the interests of the beneficiary with a disability, the second trust, or if there are two or more second trusts, the second trusts in the aggregate, must grant each other beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to the beneficiary's beneficial interests in the first trust.

Source: Laws 2020, LB808, § 23.

Operative date November 14, 2020.

30-4514 Protection of charitable interest.

(a) In this section:

(1) Determinable charitable interest means a charitable interest that is a right to a mandatory distribution currently, periodically, on the occurrence of a specified event, or after the passage of a specified time and which is unconditional or will be held solely for charitable purposes.

(2) Unconditional means not subject to the occurrence of a specified event that is not certain to occur, other than a requirement in a trust instrument that a charitable organization be in existence or qualify under a particular provision of the Internal Revenue Code of 1986, as amended, on the date of the distribution, if the charitable organization meets the requirement on the date of determination.

(b) If a first trust contains a determinable charitable interest, the Attorney General has the rights of a qualified beneficiary and may represent and bind the charitable interest.

(c) If a first trust contains a charitable interest, the second trust or trusts may not:

- (1) diminish the charitable interest;
 - (2) diminish the interest of an identified charitable organization that holds the charitable interest;
 - (3) alter any charitable purpose stated in the first-trust instrument; or
 - (4) alter any condition or restriction related to the charitable interest.
- (d) If there are two or more second trusts, the second trusts shall be treated as one trust for purposes of determining whether the exercise of the decanting power diminishes the charitable interest or diminishes the interest of an identified charitable organization for purposes of subsection (c) of this section.
- (e) If a first trust contains a determinable charitable interest, the second trust or trusts that include a charitable interest pursuant to subsection (c) of this section must be administered under the law of this state unless:
- (1) the Attorney General, after receiving notice under section 30-4507, fails to object in a signed record delivered to the authorized fiduciary within the notice period;
 - (2) the Attorney General consents in a signed record to the second trust or trusts being administered under the law of another jurisdiction; or
 - (3) the court approves the exercise of the decanting power.
- (f) The Uniform Trust Decanting Act does not limit the powers and duties of the Attorney General under law of this state other than the act.

Source: Laws 2020, LB808, § 24.

Operative date November 14, 2020.

30-4515 Trust limitation on decanting.

- (a) An authorized fiduciary may not exercise the decanting power to the extent the first-trust instrument expressly prohibits exercise of:
- (1) the decanting power; or
 - (2) a power granted by state law to the fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.
- (b) Exercise of the decanting power is subject to any restriction in the first-trust instrument that expressly applies to exercise of:
- (1) the decanting power; or
 - (2) a power granted by state law to a fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.
- (c)(1) An authorized fiduciary who is a current beneficiary of the first trust or a beneficiary to which the net income or principal of the first trust would be distributed if the first trust were terminated may not exercise the decanting power under the Uniform Trust Decanting Act in a manner to eliminate or restrict a spendthrift clause or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest in the first trust.
- (2) Subject to subdivision (c)(1) of this section, a general prohibition of the amendment or revocation of a first trust, a spendthrift clause, or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest does not preclude exercise of the decanting power.
- (d) Subject to subsections (a) and (b) of this section, an authorized fiduciary may exercise the decanting power under the Uniform Trust Decanting Act even if the first-trust instrument permits the authorized fiduciary or another person

to modify the first-trust instrument or to distribute part or all of the principal of the first trust to another trust.

(e) If a first-trust instrument contains an express prohibition described in subsection (a) of this section or an express restriction described in subsection (b) of this section, the provision must be included in the second-trust instrument.

Source: Laws 2020, LB808, § 25.

Operative date November 14, 2020.

30-4516 Change in compensation.

(a) If a first-trust instrument specifies an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the specified compensation unless:

(1) all qualified beneficiaries of the second trust consent to the increase in a signed record; or

(2) the increase is approved by the court.

(b) If a first-trust instrument does not specify an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the compensation permitted by the Nebraska Uniform Trust Code unless:

(1) all qualified beneficiaries of the second trust consent to the increase in a signed record; or

(2) the increase is approved by the court.

(c) A change in an authorized fiduciary's compensation which is incidental to other changes made by the exercise of the decanting power is not an increase in the fiduciary's compensation for purposes of subsections (a) and (b) of this section.

Source: Laws 2020, LB808, § 26.

Operative date November 14, 2020.

Cross References

Nebraska Uniform Trust Code, see section 30-3801.

30-4517 Relief from liability and indemnification.

(a) Except as otherwise provided in this section, a second-trust instrument may not relieve an authorized fiduciary from liability for breach of trust to a greater extent than the first-trust instrument.

(b) A second-trust instrument may provide for indemnification of an authorized fiduciary of the first trust or another person acting in a fiduciary capacity under the first trust for any liability or claim that would have been payable from the first trust if the decanting power had not been exercised.

(c) A second-trust instrument may not reduce fiduciary liability in the aggregate.

(d) Subject to subsection (c) of this section, a second-trust instrument may divide and reallocate fiduciary powers among fiduciaries, including one or more trustees, distribution advisors, investment advisors, trust protectors, or other persons, and relieve a fiduciary from liability for an act or failure to act of

another fiduciary as permitted by law of this state other than the Uniform Trust Decanting Act.

Source: Laws 2020, LB808, § 27.
Operative date November 14, 2020.

30-4518 Removal or replacement of authorized fiduciary.

An authorized fiduciary may not exercise the decanting power to modify a provision in a first-trust instrument granting another person power to remove or replace the fiduciary unless:

- (1) the person holding the power consents to the modification in a signed record and the modification applies only to the person;
- (2) the person holding the power and the qualified beneficiaries of the second trust consent to the modification in a signed record and the modification grants a substantially similar power to another person; or
- (3) the court approves the modification and the modification grants a substantially similar power to another person.

Source: Laws 2020, LB808, § 28.
Operative date November 14, 2020.

30-4519 Tax-related limitations.

(a) In this section:

(1) Grantor trust means a trust as to which a settlor of a first trust is considered the owner under 26 U.S.C. 671 to 677 or 26 U.S.C. 679, as such sections existed on November 14, 2020.

(2) Internal Revenue Code means the Internal Revenue Code of 1986, as amended.

(3) Nongrantor trust means a trust that is not a grantor trust.

(4) Qualified benefits property means property subject to the minimum distribution requirements of 26 U.S.C. 401(a)(9) and any applicable regulations, or to any similar requirements that refer to 26 U.S.C. 401(a)(9) or the regulations, as such section and regulations existed on November 14, 2020.

(b) An exercise of the decanting power is subject to the following limitations:

(1) If a first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than this section, for a marital deduction for purposes of the gift or estate tax under the Internal Revenue Code or a state gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(2) If the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than this section, for a charitable deduction for purposes of the income, gift, or estate tax under the Internal Revenue Code or a state income, gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduc-

tion, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(3) If the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than this section, for the exclusion from the gift tax described in 26 U.S.C. 2503(b), as such section existed on November 14, 2020, the second-trust instrument must not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. 2503(b), as such section existed on November 14, 2020. If the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than this section, for the exclusion from the gift tax described in 26 U.S.C. 2503(b), as such section existed on November 14, 2020, by application of 26 U.S.C. 2503(c), as such section existed on November 14, 2020, the second-trust instrument must not include or omit a term that, if included or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. 2503(c), as such section existed on November 14, 2020.

(4) If the property of the first trust includes shares of stock in an S corporation, as defined in 26 U.S.C. 1361, as such section existed on November 14, 2020, and the first trust is, or but for provisions of the Uniform Trust Decanting Act other than this section would be, a permitted shareholder under any provision of 26 U.S.C. 1361, as such section existed on November 14, 2020, an authorized fiduciary may exercise the power with respect to part or all of the S-corporation stock only if any second trust receiving the stock is a permitted shareholder under 26 U.S.C. 1361(c)(2), as such section existed on November 14, 2020. If the property of the first trust includes shares of stock in an S corporation and the first trust is, or but for provisions of the Uniform Trust Decanting Act other than this section would be, a qualified subchapter-S trust within the meaning of 26 U.S.C. 1361(d), as such section existed on November 14, 2020, the second-trust instrument must not include or omit a term that prevents the second trust from qualifying as a qualified subchapter-S trust.

(5) If the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than this section, for a zero inclusion ratio for purposes of the generation-skipping transfer tax under 26 U.S.C. 2642(c), as such section existed on November 14, 2020, the second-trust instrument must not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the transfer to the first trust from qualifying for a zero inclusion ratio under 26 U.S.C. 2642(c), as such section existed on November 14, 2020.

(6) If the first trust is directly or indirectly the beneficiary of qualified benefits property, the second-trust instrument may not include or omit any term that, if included in or omitted from the first-trust instrument, would have increased the minimum distributions required with respect to the qualified benefits property under 26 U.S.C. 401(a)(9), as such section existed on November 14, 2020, and any applicable regulations, or any similar requirements that refer to 26 U.S.C. 401(a)(9), as such section existed on November 14, 2020, or the regulations. If an attempted exercise of the decanting power violates the preceding sentence, the trustee is deemed to have held the qualified benefits property and any

reinvested distributions of the property as a separate share from the date of the exercise of the power and section 30-4522 applies to the separate share.

(7) If the first trust qualifies as a grantor trust because of the application of 26 U.S.C. 672(f)(2)(A), as such section existed on November 14, 2020, the second trust may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the first trust from qualifying under 26 U.S.C. 672(f)(2)(A), as such section existed on November 14, 2020.

(8) In this subdivision, tax benefit means a federal or state tax deduction, exemption, exclusion, or other benefit not otherwise listed in this section, except for a benefit arising from being a grantor trust. Subject to subdivision (9) of this subsection, a second-trust instrument may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented qualification for a tax benefit if:

(A) the first-trust instrument expressly indicates an intent to qualify for the benefit or the first-trust instrument clearly is designed to enable the first trust to qualify for the benefit; and

(B) the transfer of property held by the first trust or the first trust qualified, or but for provisions of the Uniform Trust Decanting Act other than this section, would have qualified for the tax benefit.

(9) Subject to subdivision (4) of this subsection:

(A) except as otherwise provided in subdivision (7) of this subsection, the second trust may be a nongrantor trust, even if the first trust is a grantor trust; and

(B) except as otherwise provided in subdivision (10) of this subsection, the second trust may be a grantor trust, even if the first trust is a nongrantor trust.

(10) An authorized fiduciary may not exercise the decanting power if a settlor objects in a signed record delivered to the fiduciary within the notice period and:

(A) the first trust and a second trust are both grantor trusts, in whole or in part, the first trust grants the settlor or another person the power to cause the first trust to cease to be a grantor trust, and the second trust does not grant an equivalent power to the settlor or other person; or

(B) the first trust is a nongrantor trust and a second trust is a grantor trust, in whole or in part, with respect to the settlor, unless:

(i) the settlor has the power at all times to cause the second trust to cease to be a grantor trust; or

(ii) the first-trust instrument contains a provision granting the settlor or another person a power that would cause the first trust to cease to be a grantor trust and the second-trust instrument contains the same provision.

Source: Laws 2020, LB808, § 29.

Operative date November 14, 2020.

30-4520 Duration of second trust.

(a) Subject to subsection (b) of this section, a second trust may have a duration that is the same as or different from the duration of the first trust.

(b) To the extent that property of a second trust is attributable to property of the first trust, the property of the second trust is subject to any rules governing

maximum perpetuity, accumulation, or suspension of the power of alienation which apply to property of the first trust.

Source: Laws 2020, LB808, § 30.
Operative date November 14, 2020.

30-4521 Need to distribute not required.

An authorized fiduciary may exercise the decanting power whether or not under the first trust's discretionary distribution standard the fiduciary would have made or could have been compelled to make a discretionary distribution of principal at the time of the exercise.

Source: Laws 2020, LB808, § 31.
Operative date November 14, 2020.

30-4522 Saving provision.

(a) If exercise of the decanting power would be effective under the Uniform Trust Decanting Act except that the second-trust instrument in part does not comply with the act, the exercise of the power is effective and the following rules apply with respect to the principal of the second trust attributable to the exercise of the power:

(1) A provision in the second-trust instrument which is not permitted under the act is void to the extent necessary to comply with the act.

(2) A provision required by the act to be in the second-trust instrument which is not contained in the instrument is deemed to be included in the instrument to the extent necessary to comply with the act.

(b) If a trustee or other fiduciary of a second trust determines that subsection (a) of this section applies to a prior exercise of the decanting power, the fiduciary shall take corrective action consistent with the fiduciary's duties.

Source: Laws 2020, LB808, § 32.
Operative date November 14, 2020.

30-4523 Trust for care of animal.

(a) In this section:

(1) Animal trust means a trust or an interest in a trust created to provide for the care of one or more animals.

(2) Protector means a person appointed in an animal trust to enforce the trust on behalf of the animal or, if no such person is appointed in the trust, a person appointed by the court for that purpose.

(b) The decanting power may be exercised over an animal trust that has a protector to the extent the trust could be decanted under the Uniform Trust Decanting Act if each animal that benefits from the trust were an individual, if the protector consents in a signed record to the exercise of the power.

(c) A protector for an animal has the rights under the act of a qualified beneficiary.

(d) Notwithstanding any other provision of the act, if a first trust is an animal trust, in an exercise of the decanting power, the second trust must provide that

trust property may be applied only to its intended purpose for the period the first trust benefited the animal.

Source: Laws 2020, LB808, § 33.
Operative date November 14, 2020.

30-4524 Terms of second trust.

A reference in the Nebraska Uniform Trust Code to a trust instrument or terms of the trust includes a second-trust instrument and the terms of the second trust.

Source: Laws 2020, LB808, § 34.
Operative date November 14, 2020.

Cross References

Nebraska Uniform Trust Code, see section 30-3801.

30-4525 Settlor.

(a) For purposes of law of this state other than the Uniform Trust Decanting Act and subject to subsection (b) of this section, a settlor of a first trust is deemed to be the settlor of the second trust with respect to the portion of the principal of the first trust subject to the exercise of the decanting power.

(b) In determining settlor intent with respect to a second trust, the intent of a settlor of the first trust, a settlor of the second trust, and the authorized fiduciary may be considered.

Source: Laws 2020, LB808, § 35.
Operative date November 14, 2020.

30-4526 Later-discovered property.

(a) Except as otherwise provided in subsection (c) of this section, if exercise of the decanting power was intended to distribute all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust and property paid to or acquired by the first trust after the exercise of the power is part of the trust estate of the second trust or trusts.

(b) Except as otherwise provided in subsection (c) of this section, if exercise of the decanting power was intended to distribute less than all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power remains part of the trust estate of the first trust.

(c) An authorized fiduciary may provide in an exercise of the decanting power or by the terms of a second trust for disposition of later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power.

Source: Laws 2020, LB808, § 36.
Operative date November 14, 2020.

30-4527 Obligations.

A debt, liability, or other obligation enforceable against property of a first trust is enforceable to the same extent against the property when held by the second trust after exercise of the decanting power.

Source: Laws 2020, LB808, § 37.

Operative date November 14, 2020.

30-4528 Uniformity of application and construction.

In applying and construing the Uniform Trust Decanting Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2020, LB808, § 38.

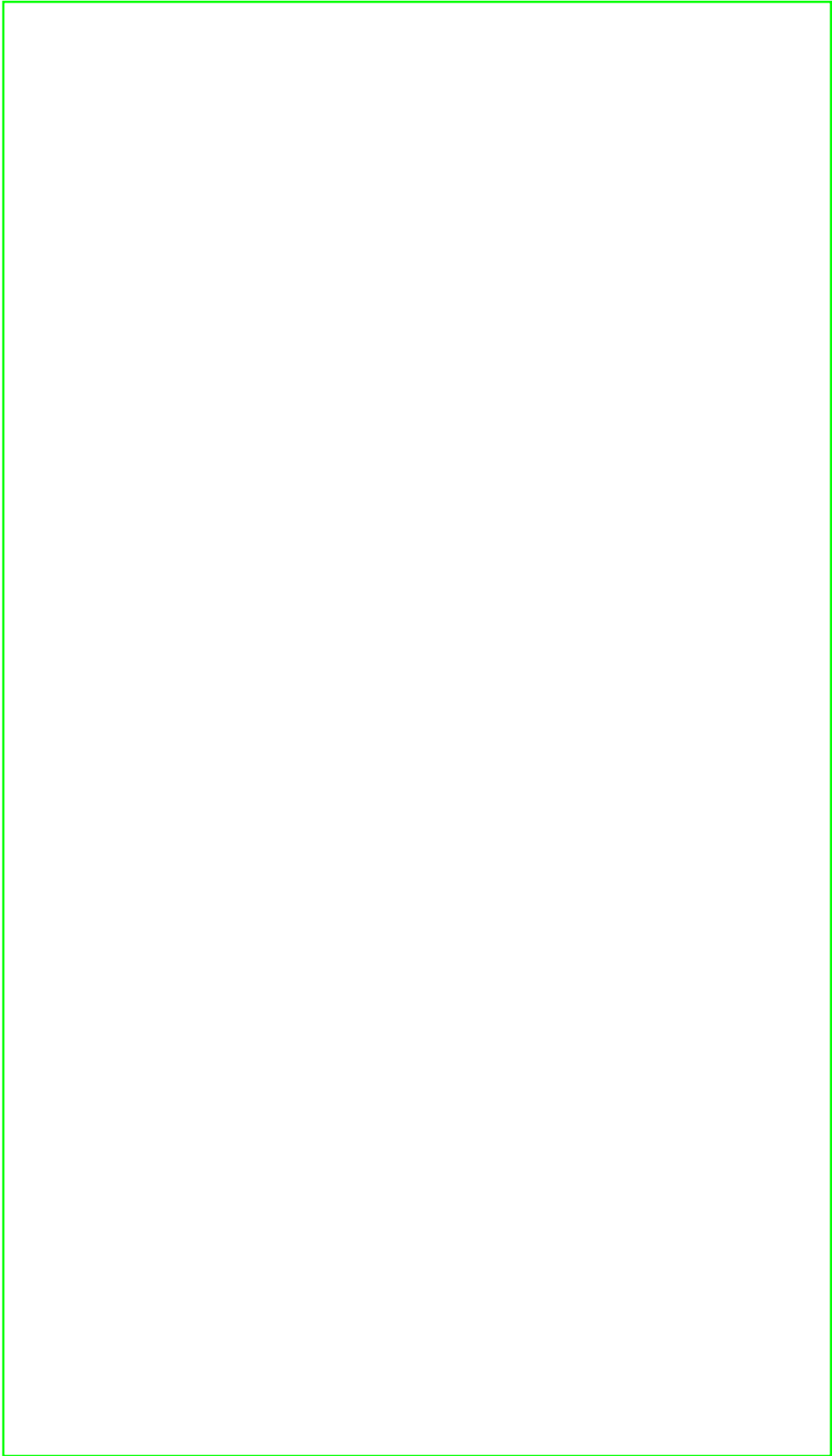
Operative date November 14, 2020.

30-4529 Relation to federal Electronic Signatures in Global and National Commerce Act.

The Uniform Trust Decanting Act modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b), as such sections existed on November 14, 2020.

Source: Laws 2020, LB808, § 39.

Operative date November 14, 2020.



CHAPTER 31 DRAINAGE

Article.

3. Drainage Districts Organized by Proceedings in District Court. 31-320, 31-329.
5. Sanitary Drainage Districts in Municipalities. 31-501 to 31-508.
7. Sanitary and Improvement Districts.
 - (c) District Boundaries. 31-763 to 31-766.
 - (f) Recall of Trustees. 31-787, 31-793.
9. County Drainage Act. 31-925.
10. Flood Plain Management. 31-1017.

ARTICLE 3

DRAINAGE DISTRICTS ORGANIZED BY PROCEEDINGS IN DISTRICT COURT

Section

- 31-320. Land outside of district; inclusion; conditions; procedure.
- 31-329. Engineer's report; objections; decision; appeal; bond; procedure.

31-320 Land outside of district; inclusion; conditions; procedure.

If, upon the filing of the report of the engineer, together with the estimates as provided in section 31-311, it appears that lands, other than those incorporated by the court in the district, will be benefited by the drainage improvements of the district, the chairperson of the board of supervisors shall file a petition in the district court of the county where the district was originally organized, containing a description of the lands and the name or names of the owners as they appear on the tax duplicate of the county in which the lands are situated and their place or places of residence and alleging that such land will be benefited by the improvements and ought in justice bear its proportion of the expense and cost of such improvement and that such land was not incorporated within the limits of the drainage district as originally established by the court. If the names of the owners of any such tract or tracts of land are unknown, this fact shall be stated. The prayer of the petition shall be that such tract or tracts of land may be incorporated and made a part of the district. Upon the filing of such petition, duly verified, the clerk of the district court shall issue summons or notice to the parties interested as provided by section 31-303 with reference to the original petition for the establishment of the district, the same proceedings shall be had upon the petition and in the same court as upon the original petition for the establishment of the district, and the same provisions of law shall apply thereto insofar as the same are applicable. Upon the return day of such notice or summons, or at any other time to which the court shall adjourn the cause, the court shall have jurisdiction to try and determine such matter at chambers and to make all necessary orders, judgments, and decrees. The owners of such lands may by writing, duly verified, waive the issuance and service of all notice or process and consent that the court may at once upon the filing of the petition and waiver enter the necessary decree. Upon filing the petition it shall be the duty of the clerk to record the cause as a proceeding in and part of the original cause for the establishment of the district. After

entering of the decree of the court, the land and all of the parties so brought into the district shall be subject to the same provisions of law as would have applied to them had they been incorporated in the original petition and decree entered thereon. No land shall be included in such drainage district or be subject to taxation for the drainage except wet, submerged, and swamp lands or land within a district subject to overflow.

Source: Laws 1905, c. 161, § 11, p. 616; R.S.1913, § 1815; C.S.1922, § 1762; C.S.1929, § 31-419; R.S.1943, § 31-320; Laws 2018, LB193, § 67.

31-329 Engineer's report; objections; decision; appeal; bond; procedure.

Any person or corporation who has filed objections and had a hearing, feeling aggrieved by the decision and judgment of the board of supervisors, may appeal to the district court within and for the county in which the drainage district was originally established, upon giving a bond conditioned the same as in appeals to the district court as from civil actions in county court in this state and payable to the drainage district, and in addition thereto conditioned that the appellant will pay all damages which may accrue to the drainage district by reason of such appeal. The bond shall be approved by the secretary of the board of supervisors and filed with the secretary within ten days after the rendition of the decision appealed from. Within ten days after the filing of the bond the secretary shall make and file a transcript of the proceedings appealed from, together with all the documents relating thereto, with the clerk of the district court in which the matter has been appealed. Upon the filing of the transcript and bond, the district court shall have jurisdiction of the cause, and the same shall be filed as in appeals in other civil actions to such court. The court shall hear and determine all such objections in a summary manner as in a case in equity and shall increase or reduce the amount of benefit on any tract where the same may be required in order to make the apportionment equitable. All objections that may be filed shall be heard and determined by the court as one proceeding, and only one transcript of the final order of the board of supervisors, fixing the apportionments or benefits, shall be required. The clerk of the district court shall forthwith certify the decision of the court to the board of supervisors which shall take such action as may be rendered necessary by such decisions.

Source: Laws 1905, c. 161, § 17, p. 623; Laws 1909, c. 147, § 7, p. 515; R.S.1913, § 1824; C.S.1922, § 1771; C.S.1929, § 31-428; R.S. 1943, § 31-329; Laws 1972, LB 1032, § 207; Laws 2018, LB193, § 68.

ARTICLE 5

SANITARY DRAINAGE DISTRICTS IN MUNICIPALITIES

Section

- 31-501. Sanitary drainage district in municipality; organization; petition for election.
 31-505. Sanitary district trustees; election; organization; officers; corporate powers.
 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.

31-505 Sanitary district trustees; election; organization; officers; corporate powers.

Upon the organization of any such sanitary district the county board shall call an election for the election of trustees, who shall hold their offices until their successors are elected and qualified. Where such sanitary district does not contain a city of 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 three trustees, and where such sanitary district contains a city of more than forty thousand inhabitants as so determined, there shall be five trustees. In districts having three trustees, at the first general state election held in November after the organization of the district, there shall be elected one trustee for a term of two years and two trustees for a term of four years, and thereafter their respective successors shall be elected for a term of four years at the general state election held in November immediately prior to the expiration of their respective terms. In districts having five trustees, at the first general state election held in November after the organization of the district, there shall be elected two trustees for a term of two years and three trustees for a term of four years, and thereafter their respective successors shall be elected for a term of four years at the general state election held in November immediately prior to the expiration of their respective terms. At the first meeting after election of one or more members, the board shall elect one of their number president and, in case they fail to elect, then the member who at his or her election received the highest number of votes shall be president of such board. Such district shall be a body corporate and politic by name of Sanitary District of, with

power to sue, be sued, contract, acquire and hold property, and adopt a common seal.

Source: Laws 1891, c. 36, § 2, p. 288; R.S.1913, § 1926; C.S.1922, § 1867; C.S.1929, § 31-605; Laws 1943, c. 75, § 3, p. 259; R.S.1943, § 31-505; Laws 1949, c. 81, § 1, p. 214; Laws 2019, LB67, § 7.

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.

ARTICLE 7

SANITARY AND IMPROVEMENT DISTRICTS

(c) DISTRICT BOUNDARIES

Section

- 31-763. Annexation of territory by a city or village; effect on certain contracts.
 31-764. Annexation; trustees; administrator; accounting; effect; special assessments prohibited.
 31-765. Annexation; when effective; trustees; administrator; duties; special assessments prohibited.
 31-766. Annexation; obligations and assessments; agreement to divide; approval; special assessments prohibited; effect on certain contracts.

(f) RECALL OF TRUSTEES

- 31-787. Trustee; removal by recall; petition; procedure.
 31-793. Recall petition filing form; filing limitation.

(c) DISTRICT BOUNDARIES

31-763 Annexation of territory by a city or village; effect on certain contracts.

(1) Whenever any city or village annexes all the territory within the boundaries of any sanitary and improvement district organized under the provisions of sections 31-701 to 31-726.01 as such sections existed prior to July 19, 1996, or under sections 31-727 to 31-762, the district shall merge with the city or village and the city or village shall succeed to all the property and property rights of every kind, contracts, obligations, and choses in action of every kind, held by or belonging to the district, and the city or village shall be liable for and recognize, assume, and carry out all valid contracts and obligations of the district. All taxes, assessments, claims, and demands of every kind due or owing to the district shall be paid to and collected by the city or village. Any special assessments which the district was authorized to levy, assess, relevel, or reassess, but which were not levied, assessed, relevelled, or reassessed, at the time of the merger, for improvements made by it or in the process of construction or contracted for may be levied, assessed, relevelled, or reassessed by the annexing city or village to the same extent as the district may have levied or assessed but for the merger. Nothing in this section shall authorize the annexing city or village to revoke any resolution, order, or finding made by the district in regard to special benefits or increase any assessments made by the district, but such city or village shall be bound by all such findings or orders and assessments to the same extent as the district would be bound. No district so annexed shall have power to levy any special assessments after the effective date of such annexation.

(2) Any contract entered into on or after August 30, 2015, by a sanitary and improvement district for solid waste collection services shall, upon annexation of such district by a city or village, be canceled and voided.

Source: Laws 1959, c. 130, § 1, p. 467; Laws 1969, c. 255, § 1, p. 925; Laws 2015, LB324, § 5; Laws 2018, LB130, § 1.

31-764 Annexation; trustees; administrator; accounting; effect; special assessments prohibited.

The trustees or administrator of a sanitary and improvement district shall, within thirty days after the effective date of the merger, submit to the city or village a written accounting of all assets and liabilities, contingent or fixed, of the district. Unless the city or village within six months thereafter brings an action against the trustees or administrator of the district for an accounting or for damages for breach of duty, the trustees or administrator shall be discharged of all further duties and liabilities and their bonds exonerated. If the city or village brings such an action and does not recover judgment in its favor, the taxable costs may include reasonable expenses incurred by the trustees or administrator in connection with such suit and a reasonable attorney's fee for the trustees' or administrator's attorney. The city or village shall represent the district and all parties who might be interested in such an action. The city or village and such trustees or administrator shall be the only necessary parties to such action. Nothing contained in this section shall authorize the trustees or administrator to levy any special assessments after the effective date of the merger.

Source: Laws 1959, c. 130, § 2, p. 468; Laws 1969, c. 255, § 2, p. 926; Laws 1976, LB 313, § 9; Laws 1982, LB 868, § 26; Laws 2018, LB130, § 2.

31-765 Annexation; when effective; trustees; administrator; duties; special assessments prohibited.

The merger shall be effective thirty days after the effective date of the ordinance annexing the territory within the sanitary and improvement district. If the validity of the ordinance annexing the territory is challenged by a proceeding in a court of competent jurisdiction, the effective date of the merger shall be thirty days after the final determination of the validity of the ordinance. The trustees or administrator of the sanitary and improvement district shall continue in possession and conduct the affairs of the district until the effective date of the merger, but shall not during such period levy any special assessments after the effective date of annexation.

Source: Laws 1959, c. 130, § 3, p. 468; Laws 1969, c. 255, § 3, p. 926; Laws 1982, LB 868, § 27; Laws 2018, LB130, § 3.

31-766 Annexation; obligations and assessments; agreement to divide; approval; special assessments prohibited; effect on certain contracts.

(1) If only a part of the territory within any sanitary and improvement district is annexed by a city or village, the sanitary and improvement district acting through its trustees or administrator and the city or village acting through its governing body may agree between themselves as to the division of the assets, liabilities, maintenance, contracts, or other obligations of the district for a change in the boundaries of the district so as to exclude the portion annexed by the city or village or may agree upon a merger of the district with the city or village. The division of assets, liabilities, maintenance, contracts, or other obligations of the district shall be equitable, shall be proportionate to the valuation of the portion of the district annexed and to the valuation of the portion of the district remaining following annexation, and shall, to the greatest extent feasible, reflect the actual impact of the annexation on the ability of the district to perform its duties and responsibilities within its new boundaries following annexation. In the event a merger is agreed upon, the city or village shall have all the rights, privileges, duties, and obligations as provided in sections 31-763 to 31-765 when the city or village annexes the entire territory within the district, and the trustees or administrator shall be relieved of all further duties and liabilities and their bonds exonerated as provided in section 31-764. No agreement between the district and the city or village shall be effective until submitted to and approved by the district court of the county in which the major portion of the district is located. No agreement shall be approved which may prejudice the rights of any bondholder or creditor of the district or employee under contract to the district. The court may authorize or direct amendments to the agreement before approving the same. If the district and city or village do not agree upon the proper adjustment of all matters growing out of the annexation of a part of the territory located within the district, the district, the annexing city or village, any bondholder or creditor of the district, or any employee under contract to the district may apply to the district court of the county where the major portion of the district is located for an adjustment of all matters growing out of or in any way connected with the annexation of such territory, and after a hearing thereon the court may enter an order or decree fixing the rights, duties, and obligations of the parties. In every case such decree or order shall require a change of the district boundaries so as to exclude from the district that portion of the territory of the district which has been annexed. Such change of boundaries shall become effective on the date of

entry of such decree. Only the district and the city or village shall be necessary parties to such an action. Any bondholder or creditor of the district or any employee under contract to the district whose interests may be adversely affected by the annexation may intervene in the action pursuant to section 25-328. The decree when entered shall be binding on the parties the same as though the parties had voluntarily agreed thereto. Nothing contained in this section shall authorize any district to levy any special assessments within the annexed area after the effective date of annexation.

(2) Any contract entered into on or after August 30, 2015, by a sanitary and improvement district for solid waste collection services shall, upon annexation of all or part of such district by a city or village, be canceled and voided as to the annexed areas.

Source: Laws 1959, c. 130, § 4, p. 469; Laws 1969, c. 255, § 4, p. 927; Laws 1982, LB 868, § 28; Laws 1994, LB 630, § 6; Laws 2015, LB324, § 6; Laws 2018, LB130, § 4.

(f) RECALL OF TRUSTEES

31-787 Trustee; removal by recall; petition; procedure.

(1) A trustee of a sanitary and improvement district may be removed from office by recall pursuant to sections 31-786 to 31-793. A petition for an election to recall a trustee shall be sufficient if it complies with the requirements of this section.

(2) The signers of the petition shall be persons who were, on the date the initial petition papers are issued under subsection (7) of this section, eligible to vote in a district election as provided in section 31-735. A person's eligibility to sign a petition shall be the same as the person's eligibility to cast one or more votes at a district election under section 31-735. Only one person shall be allowed to sign on behalf of joint owners of property in the district or on behalf of a public, private, or municipal corporation that owns property in the district. If the trustee whose recall is sought was elected by vote of resident owners only, then only resident owners shall be allowed to sign the petition. If the trustee whose recall is sought was elected by vote of all owners of property, then all owners shall be allowed to sign the petition. Resident owner means qualified resident voter. All owners means all qualified resident voters and all qualified property owning voters.

(3) The filing clerk shall assign to each signature a count equal to the number of votes that the signer was eligible to cast on the date he or she signed. The number of votes that a signer was eligible to cast shall be based on section 31-735. If the signature was made by or for an owner of more than one parcel of property, the signature made by or on behalf of such owner shall be assigned a count equal to the total number of votes which the owner was eligible to cast.

(4) The filing clerk shall total the count assigned to the signatures on the petition. The petition shall be sufficient if the total is at least equal to thirty-five percent of the highest number of votes that were cast for a candidate at the previous district election for the trustee positions in the same category as the trustee whose recall is sought by the petition. The categories of trustees shall be the same as provided in section 31-735.

(5) The signatures shall be affixed to petition papers and shall be considered part of the petition.

(6) The petition papers shall be procured from the filing clerk. Prior to the issuance of such petition papers, a recall petition filing form shall be signed and filed with the filing clerk by at least one qualified resident voter of the district, if the trustee whose recall is being sought was elected solely by qualified resident voters, or at least one qualified resident voter or qualified property owning voter, if the trustee whose recall is being sought was elected by other qualified resident voters and qualified property owning voters. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The filing form shall state the name of the trustee sought to be removed and whether qualified property owning voters participated in the election of the trustee and shall request that the filing clerk issue initial petition papers to the principal circulator for circulation. The filing clerk shall notify the principal circulator or circulators that the necessary signatures must be gathered within thirty days after the date of issuing the petitions.

(7) The filing clerk, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his or her office, the name of the principal circulator or circulators to whom the papers were issued, the date of issuance, the number of papers issued, and whether qualified property owning voters may participate in signing the petitions. The filing clerk shall certify on the papers the name of the principal circulator or circulators to whom the papers were issued, the date they were issued, and whether qualified property owning voters may participate in signing the petitions. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator or circulators who check out petitions from the filing clerk may distribute such petitions to persons who may act as circulators of such petitions.

Source: Laws 1997, LB 874, § 2; Laws 2002, LB 176, § 5; Laws 2003, LB 444, § 2; Laws 2012, LB1121, § 1; Laws 2019, LB411, § 27.

31-793 Recall petition filing form; filing limitation.

No recall petition filing form shall be filed against a trustee under section 31-787 within twelve months after a recall election has failed to remove him or her from office or within six months after the beginning of his or her term of office or within six months prior to the incumbent filing deadline for the office.

Source: Laws 1997, LB 874, § 8; Laws 2019, LB411, § 28.

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.

ARTICLE 10
FLOOD PLAIN MANAGEMENT

Section

31-1017. Department; flood plain management; powers and duties.

31-1017 Department; flood plain management; powers and duties.

The department shall be the official state agency for all matters pertaining to flood plain management. In carrying out that function, the department shall have the power and authority to:

(1) Coordinate flood plain management activities of local, state, and federal agencies;

(2) Receive federal funds intended to accomplish flood plain management objectives;

(3) Prepare and distribute information and conduct educational activities which will aid the public and local units of government in complying with the purposes of sections 31-1001 to 31-1023;

(4) Provide local governments having jurisdiction over flood-prone lands with technical data and maps adequate to develop or support reasonable flood plain management regulation;

(5) Adopt and promulgate rules and regulations establishing minimum standards for local flood plain management regulation. In addition to the public notice requirement in the Administrative Procedure Act, the department shall, at least twenty days in advance, notify the clerks of all cities, villages, and counties which might be affected of any hearing to consider the adoption, amendment, or repeal of such minimum standards. Such minimum standards shall be designed to protect human life, health, and property and to preserve the capacity of the flood plain to discharge the waters of the base flood and shall take into consideration (a) the danger to life and property by water which may be backed up or diverted by proposed obstructions and land uses, (b) the danger that proposed obstructions or land uses will be swept downstream to the injury of others, (c) the availability of alternate locations for proposed obstructions and land uses, (d) the opportunities for construction or alteration of proposed obstructions in such a manner as to lessen the danger, (e) the permanence of proposed obstructions or land uses, (f) the anticipated development in the foreseeable future of areas which may be affected by proposed obstructions or land uses, (g) hardship factors which may result from approval or denial of proposed obstructions or land uses, and (h) such other factors as are in harmony with the purposes of sections 31-1001 to 31-1023. Such minimum standards may, when required by law, distinguish between farm and nonfarm activities and shall provide for anticipated developments and gradations in flood hazards. If deemed necessary by the department to adequately accomplish the purposes of such sections, such standards may be more restrictive than those contained in the national flood insurance program standards, except that the department shall not adopt standards which conflict with those of the national flood insurance program in such a way that compliance with both sets of standards is not possible;

(6) Provide local governments and other state and local agencies with technical assistance, engineering assistance, model ordinances, assistance in evaluating permit applications and possible violations of flood plain manage-

ment regulations, assistance in personnel training, and assistance in monitoring administration and enforcement activities;

(7) Serve as a repository for all known flood data within the state;

(8) Assist federal, state, or local agencies in the planning and implementation of flood plain management activities, such as flood warning systems, land acquisition programs, and relocation programs;

(9) Enter upon any lands and waters in the state for the purpose of making any investigation or survey or as otherwise necessary to carry out the purposes of such sections. Such right of entry shall extend to all employees, surveyors, or other agents of the department in the official performance of their duties, and such persons shall not be liable to prosecution for trespass when performing their official duties;

(10) Enter into contracts or other arrangements with any state or federal agency or person as defined in section 49-801 as necessary to carry out the purposes of sections 31-1001 to 31-1023; and

(11) Adopt and enforce such rules and regulations as are necessary to carry out the duties and responsibilities of such sections.

Source: Laws 1983, LB 35, § 17; Laws 1993, LB 626, § 4; Laws 2000, LB 900, § 78; Laws 2019, LB319, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

CHAPTER 32 ELECTIONS

Article.

1. General Provisions and Definitions. 32-101 to 32-116.
2. Election Officials.
 - (a) Secretary of State. 32-202 to 32-206.
 - (b) County Election Officials. 32-208.
 - (c) Counties with Election Commissioners. 32-221, 32-223.
 - (d) Counties without Election Commissioners. 32-230 to 32-236.
3. Registration of Voters. 32-301 to 32-330.
4. Time of Elections. 32-404, 32-405.
5. Officers and Issues.
 - (a) Offices and Officeholders. 32-538 to 32-551.
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6. Filing and Nomination Procedures. 32-601 to 32-631.
8. Notice, Publication, and Printing of Ballots. 32-802 to 32-816.
9. Voting and Election Procedures. 32-901 to 32-963.
10. Counting and Canvassing Ballots. 32-1002 to 32-1041.
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12. Election Costs. 32-1203.
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14. Initiatives, Referendums, and Advisory Votes. 32-1405 to 32-1412.
15. Violations and Penalties. 32-1524, 32-1525.

ARTICLE 1

GENERAL PROVISIONS AND DEFINITIONS

Section

- 32-101. Act, how cited.
 32-103. Definitions, where found.
 32-112.01. Poll watcher, defined.
 32-116. Residence, defined.

32-101 Act, how cited.

Sections 32-101 to 32-1551 shall be known and may be cited as the Election Act.

Source: Laws 1994, LB 76, § 1; Laws 1995, LB 337, § 1; Laws 1995, LB 514, § 1; Laws 1996, LB 964, § 1; Laws 1997, LB 764, § 8; Laws 2001, LB 768, § 1; Laws 2002, LB 1054, § 7; Laws 2003, LB 181, § 1; Laws 2003, LB 358, § 1; Laws 2003, LB 359, § 1; Laws 2003, LB 521, § 3; Laws 2005, LB 401, § 2; Laws 2005, LB 566, § 1; Laws 2010, LB951, § 1; Laws 2013, LB299, § 1; Laws 2013, LB349, § 1; Laws 2014, LB661, § 1; Laws 2014, LB946, § 3; Laws 2015, LB575, § 5; Laws 2018, LB1065, § 1; Laws 2019, LB492, § 35; Laws 2020, LB1055, § 2.
 Effective date November 14, 2020.

32-103 Definitions, where found.

For purposes of the Election Act, the definitions found in sections 32-104 to 32-120 shall be used.

Source: Laws 1994, LB 76, § 3; Laws 1997, LB 764, § 9; Laws 2003, LB 358, § 2; Laws 2005, LB 566, § 2; Laws 2020, LB1055, § 3.
Effective date November 14, 2020.

32-112.01 Poll watcher, defined.

Poll watcher means an individual appointed pursuant to section 32-961 who is legally in a polling place to observe the conduct of the election.

Source: Laws 2020, LB1055, § 4.
Effective date November 14, 2020.

32-116 Residence, defined.

Residence shall mean (1) that place in Nebraska in which a person is actually domiciled, which is the residence of an individual or family, with which a person has a settled connection for the determination of his or her civil status or other legal purposes because it is actually or legally his or her permanent and principal home, and to which, whenever he or she is absent, he or she has the intention of returning, (2) the place in Nebraska where a person has his or her family domiciled even if he or she does business in another place, and (3) if a person is homeless, the county in Nebraska in which the person is living. No person serving in the armed forces of the United States shall be deemed to have a residence in Nebraska because of being stationed in Nebraska.

Source: Laws 1994, LB 76, § 16; Laws 2019, LB411, § 29.

ARTICLE 2

ELECTION OFFICIALS

(a) SECRETARY OF STATE

Section

32-202. Secretary of State; duties.

32-204. Election Administration Fund; created; use; investment.

32-206. Official election calendar; publish; contents; delivery of copy; filing or other acts; time.

(b) COUNTY ELECTION OFFICIALS

32-208. Election commissioner; qualifications; appointment to elective office; effect.

(c) COUNTIES WITH ELECTION COMMISSIONERS

32-221. Inspectors and judges and clerks of election; appointment; term; qualifications; vacancy; failure to appear; removal.

32-223. Receiving board; members; requirements; inspectors; clerk of election; appointment.

(d) COUNTIES WITHOUT ELECTION COMMISSIONERS

32-230. Receiving board; clerk of election; appointment; procedure; members; qualification; vacancy.

32-231. Judge and clerk of election; qualifications; term; district inspectors; duties.

32-236. Judge and clerk of election; district inspector; service required; violation; penalty.

(a) SECRETARY OF STATE

32-202 Secretary of State; duties.

In addition to any other duties prescribed by law, the Secretary of State shall:

- (1) Supervise the conduct of primary and general elections in this state;
- (2) Provide training for election commissioners, county clerks, and other election officials in providing for registration of voters and the conduct of elections;
- (3) Enforce the Election Act;
- (4) With the assistance and advice of the Attorney General, make uniform interpretations of the act;
- (5) Provide periodic training for the agencies and their agents and contractors in carrying out their duties under sections 32-308 to 32-310;
- (6) Develop and print forms for use as required by sections 32-308, 32-310, 32-320, 32-329, 32-947, 32-956, and 32-958;
- (7) Contract with the Department of Administrative Services for storage and distribution of the forms;
- (8) Require reporting to ensure compliance with sections 32-308 to 32-310;
- (9) Prepare and transmit reports as required by the National Voter Registration Act of 1993, 52 U.S.C. 20501 et seq.;
- (10) Develop and print a manual describing the requirements of the initiative and referendum process and distribute the manual to election commissioners and county clerks for distribution to the public upon request;
- (11) Develop and print pamphlets described in section 32-1405.01;
- (12) Adopt and promulgate rules and regulations as necessary for elections conducted under sections 32-952 to 32-959; and
- (13) Establish a free access system, such as a toll-free telephone number or an Internet web site, that any voter who casts a provisional ballot may access to discover whether the vote of that voter was counted and, if the vote was not counted, the reason that the vote was not counted. The Secretary of State shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access system. Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.

Source: Laws 1994, LB 76, § 22; Laws 1995, LB 337, § 2; Laws 1996, LB 964, § 2; Laws 2003, LB 358, § 5; Laws 2008, LB838, § 1; Laws 2019, LB411, § 30.

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.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

32-206 Official election calendar; publish; contents; delivery of copy; filing or other acts; time.

(1) The Secretary of State shall publish an official election calendar by November 1 prior to the statewide primary election. Such calendar, to be approved as to form by the Attorney General, shall set forth the various election deadline dates and other pertinent data as determined by the Secretary of State. The official election calendar shall be merely a guideline and shall in no way legally bind the Secretary of State or the Attorney General.

(2) The Secretary of State shall deliver a copy of the official election calendar to the state party headquarters of each recognized political party within ten days after publication under subsection (1) of this section.

(3) Except as provided in sections 32-302, 32-304, and 32-306, any filing or other act required to be performed by a specified day shall be performed by 5 p.m. of such day, except that if such day falls upon a Saturday, Sunday, or legal holiday, performance shall be required on the next business day.

Source: Laws 1994, LB 76, § 26; Laws 2012, LB878, § 1; Laws 2014, LB1048, § 1; Laws 2018, LB1038, § 1.

(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.

(c) COUNTIES WITH ELECTION COMMISSIONERS

32-221 Inspectors and judges and clerks of election; appointment; term; qualifications; vacancy; failure to appear; removal.

(1) The election commissioner shall appoint precinct and district inspectors, judges of election, and clerks of election to assist the election commissioner in conducting elections on election day. In counties with a population of less than four hundred thousand inhabitants as determined by the most recent federal decennial census, judges and clerks of election and inspectors shall be appoint-

ed at least thirty days prior to the statewide primary election, shall hold office for terms of two years or until their successors are appointed and qualified for the next statewide primary election, and shall serve at all elections in the county during their terms of office. In counties with a population of four hundred thousand or more inhabitants as determined by the most recent federal decennial census, judges and clerks of election shall be appointed at least thirty days prior to the first election for which appointments are necessary and shall serve for at least four elections.

(2) Judges and clerks of election may be selected at random from a cross section of the population of the county. All qualified citizens shall have the opportunity to be considered for service. All qualified citizens shall fulfill their obligation to serve as judges or clerks of election as prescribed by the election commissioner. No citizen shall be excluded from service as a result of discrimination based upon race, color, religion, sex, national origin, or economic status. No citizen shall be excluded from service unless excused by reason of ill health or other good and sufficient reason.

(3) All persons appointed shall be of good repute and character, be able to read and write the English language, and except as otherwise provided in subsection (4) of section 32-223, be registered voters in the county. No candidate at an election shall be appointed as a judge or clerk of election or inspector for such election other than a candidate for delegate to a county, state, or national political party convention.

(4) If a vacancy occurs in the office of judge or clerk of election or inspector, the election commissioner shall fill such vacancy in accordance with section 32-223. If any judge or clerk of election or inspector fails to appear at the hour appointed for the opening of the polls, the remaining officers shall notify the election commissioner, select a registered voter to serve in place of the absent officer if so directed by the election commissioner, and proceed to conduct the election. If the election commissioner finds that a judge or clerk of election or inspector does not possess all the qualifications prescribed in this section or if any judge or clerk of election or inspector is guilty of neglecting the duties of the office or of any official misconduct, the election commissioner shall remove the person and fill the vacancy.

Source: Laws 1994, LB 76, § 41; Laws 1997, LB 764, § 19; Laws 2003, LB 357, § 1; Laws 2016, LB742, § 16; Laws 2019, LB411, § 31.

32-223 Receiving board; members; requirements; inspectors; clerk of election; appointment.

(1) Except as otherwise provided in the Election Act, the election commissioner shall appoint a precinct inspector and a receiving board to consist of at least two judges and two clerks of election for each precinct. The election commissioner may appoint district inspectors to aid the election commissioner in the performance of his or her duties and supervise a group of precincts on election day.

(2) The election commissioner may allow persons serving on a receiving board as judges and clerks of election and precinct inspectors to serve for part of the time the polls are open and appoint other judges and clerks of election and precinct inspectors to serve on the same receiving board for the remainder of the time the polls are open.

(3) On each receiving board at any one time, one judge and one clerk of election shall be registered voters of the political party casting the highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election, and one judge and one clerk of election shall be registered voters of the political party casting the next highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election, except that one judge or clerk of election may be a registered voter who is not affiliated with either of such parties. If a third judge is appointed, such judge shall be a registered voter of the political party casting the highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election. All precinct and district inspectors shall be divided between all political parties as nearly as practicable in proportion to the number of votes cast in such county at the immediately preceding general election for Governor or for President of the United States by the parties, respectively.

(4) The election commissioner may appoint a person who is at least sixteen years old but is not eligible to register to vote as a clerk of election. Such clerk of election shall meet the requirements of subsection (3) of section 32-221, except that such clerk shall not be required to be a registered voter. No more than one clerk of election appointed under this subsection shall serve at any precinct. A clerk of election appointed under this subsection shall be considered a registered voter who is not affiliated with a political party for purposes of this section.

Source: Laws 1994, LB 76, § 43; Laws 2002, LB 1054, § 8; Laws 2003, LB 357, § 2; Laws 2003, LB 358, § 7; Laws 2019, LB411, § 32.

(d) COUNTIES WITHOUT ELECTION COMMISSIONERS

32-230 Receiving board; clerk of election; appointment; procedure; members; qualification; vacancy.

(1) As provided in subsection (4) of this section, the precinct committeeman and committeewoman of each political party shall appoint a receiving board consisting of three judges of election and two clerks of election. The chairperson of the county central committee of each political party shall send the names of the appointments to the county clerk no later than February 1 prior to the primary election.

(2) If no names are submitted by the chairperson, the county clerk shall appoint judges or clerks of election from the appropriate political party. Judges and clerks of election may be selected at random from a cross section of the population of the county. All qualified citizens shall have the opportunity to be considered for service. All qualified citizens shall fulfill their obligation to serve as judges or clerks of election as prescribed by the county clerk. No citizen shall be excluded from service as a result of discrimination based upon race, color, religion, sex, national origin, or economic status. No citizen shall be excluded from service unless excused by reason of ill health or other good and sufficient reason.

(3) The county clerk may allow persons serving on a receiving board to serve for part of the time the polls are open and appoint other persons to serve on the same receiving board for the remainder of the time the polls are open.

(4) In each precinct at any one time, one judge and one clerk of election shall be appointed from the political party casting the highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election, one judge and one clerk shall be appointed from the political party casting the next highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election, and one judge shall be appointed from the political party casting the third highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election. If the political party casting the third highest number of votes cast less than ten percent of the total vote cast in the county at the immediately preceding general election, the political party casting the highest number of votes at the immediately preceding general election shall be entitled to two judges and one clerk.

(5) The county clerk may appoint registered voters to serve in case of a vacancy among any of the judges or clerks of election or in addition to the judges and clerks in any precinct when necessary to meet any situation that requires additional judges and clerks. Such appointees may include registered voters unaffiliated with any political party. Such appointees shall serve at subsequent or special elections as determined by the county clerk.

(6) The county clerk may appoint a person who is at least sixteen years old but is not eligible to register to vote as a clerk of election. Such clerk of election shall meet the requirements of subsection (1) of section 32-231, except that such clerk shall not be required to be a registered voter. No more than one clerk of election appointed under this subsection shall serve at any precinct. A clerk of election appointed under this subsection shall be considered a registered voter who is not affiliated with a political party for purposes of this section.

Source: Laws 1994, LB 76, § 50; Laws 1997, LB 764, § 22; Laws 2002, LB 1054, § 11; Laws 2003, LB 357, § 3; Laws 2003, LB 358, § 8; Laws 2007, LB646, § 1; Laws 2019, LB411, § 33.

32-231 Judge and clerk of election; qualifications; term; district inspectors; duties.

(1) Each judge and clerk of election appointed pursuant to section 32-230 shall (a) be of good repute and character and able to read and write the English language, (b) reside in the precinct in which he or she is to serve unless necessity demands that personnel be appointed from another precinct, (c) be a registered voter except as otherwise provided in subsection (6) of section 32-230, and (d) serve for a term of two years or until judges and clerks of election are appointed for the next primary election. No candidate at an election shall be eligible to serve as a judge or clerk of election at the same election other than a candidate for a delegate to a county, state, or national political party convention.

(2) The county clerk may appoint district inspectors to aid the county clerk in the performance of his or her duties and supervise a group of precincts on election day. A district inspector shall meet the requirements for judges and clerks of election as provided in subsection (1) of this section, shall oversee the procedures of a group of polling places, and shall act as the personal agent and deputy of the county clerk. The district inspector shall ensure that the Election Act is uniformly enforced at the polling places assigned to him or her and

perform tasks assigned by the county clerk. The district inspector may perform all of the duties required of a judge or clerk of election.

Source: Laws 1994, LB 76, § 51; Laws 1999, LB 802, § 2; Laws 2002, LB 1054, § 12; Laws 2003, LB 357, § 4; Laws 2019, LB411, § 34.

32-236 Judge and clerk of election; district inspector; service required; violation; penalty.

Each judge and clerk of election appointed pursuant to subsection (4) of section 32-230 and each district inspector appointed pursuant to subsection (2) of section 32-231 shall serve at all elections, except city and village elections, held in the county or precinct during his or her two-year term unless excused. A violation of this section by an appointee is a Class V misdemeanor. The county clerk shall submit the names of appointees violating this section to the local law enforcement agency for citation pursuant to sections 32-1549 and 32-1550.

Source: Laws 1994, LB 76, § 56; Laws 1997, LB 764, § 24; Laws 1999, LB 802, § 6; Laws 2002, LB 1054, § 15; Laws 2019, LB411, § 35.

ARTICLE 3

REGISTRATION OF VOTERS

Section

- 32-301. Registration list; registration of electors; registration records; how kept; use on election day.
- 32-301.01. Electronic poll books; contents.
- 32-304. Registration of electors electronically; application process; application; contents; Secretary of State; Department of Motor Vehicles; duties.
- 32-312. Registration application; contents.
- 32-330. Voter registration register; public record; exception; examination; lists of registered voters; availability.

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 and beginning July 1, 2019, shall be the basis for electronic poll books at each precinct if applicable. 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. Beginning July 1, 2019, the election commissioner or county clerk may provide an electronic poll book as described in section 32-301.01 to meet the requirements for a precinct list of registered voters.

(3) The digital signatures in the possession of the Secretary of State, the election commissioner, or the county clerk shall not be public records as defined in section 84-712.01 and are not subject to disclosure under sections 84-712 to 84-712.09.

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; Laws 2018, LB1065, § 3.

32-301.01 Electronic poll books; contents.

Beginning July 1, 2019, the electronic poll books for a precinct shall contain the list of registered voters and the sign-in register for the precinct combined in one data base and shall include the registration information and the digital signatures for the registered voters of the precinct.

Source: Laws 2018, LB1065, § 2.

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 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 and electronic poll books.

(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 digital 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 prior to midnight on such Friday; 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; Laws 2018, LB1038, § 2; Laws 2018, LB1065, § 4.

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 numbers of the applicant. At the request of the applicant, a designation shall be made that a telephone number is an unlisted number, and such designation shall preclude the listing of such 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; Laws 2020, LB1055, § 5.

Effective date November 14, 2020.

32-330 Voter registration register; public record; exception; examination; lists of registered voters; availability.

(1) Except as otherwise provided in subsection (3) of section 32-301, the voter registration register shall be a public record. Any person may examine the register at the office of the election commissioner or county clerk, but no person other than the Secretary of State, the election commissioner, the county clerk, or law enforcement shall be allowed to make copies of the register. Copies of the register shall only be used for list maintenance as provided in section 32-329 or law enforcement purposes. The electronic records of the original voter registrations created pursuant to section 32-301 may constitute the voter registration register. The Secretary of State, election commissioner, or county clerk shall withhold information in the register designated as confidential under section 32-331. No portion of the register made available to the public and no list distributed pursuant to this section shall include the digital signature of any voter.

(2) The Secretary of State, election commissioner, or county clerk shall make available a list of registered voters that contains no more than the information authorized in subsection (3) of this section and, if requested, a list that only contains such information for registered voters who have voted in an election held more than thirty days prior to the request for the list. The Secretary of State, election commissioner, or county clerk shall establish the price of the lists at a rate that fairly covers the actual production cost of the lists, not to exceed three cents per name. Lists shall be used solely for purposes related to elections, political activities, voter registration, law enforcement, or jury selection. Lists shall not be used for commercial purposes.

(3)(a) The Secretary of State, election commissioner, or county clerk shall withhold from any list of registered voters distributed pursuant to subsection (2) of this section any information in the voter registration records which is designated as confidential under section 32-331 or marked private on the voter registration application or voter registration record.

(b) Except as otherwise provided in subdivision (a) of this subsection, a list of registered voters distributed pursuant to subsection (2) of this section shall contain no more than the following information:

- (i) The registrant's name;
- (ii) The registrant's residential address;
- (iii) The registrant's mailing address;
- (iv) The registrant's telephone number;

- (v) The registrant’s voter registration status;
- (vi) The registrant’s voter identification number;
- (vii) The registrant’s date of birth;
- (viii) The registrant’s date of voter registration;
- (ix) The registrant’s voting precinct;
- (x) The registrant’s polling site;
- (xi) The registrant’s political party affiliation;
- (xii) The political subdivisions in which the registrant resides; and
- (xiii) The registrant’s voter history.

(4) Any person who acquires a list of registered voters under subsection (2) of this section shall provide his or her name, address, telephone number, email address, and campaign committee name or organization name, if applicable, and the state of organization, if applicable, and shall take and subscribe to an oath in substantially the following form:

I hereby swear that I will use the list of registered voters of County, Nebraska, (or the State of Nebraska) only for the purposes prescribed in section 32-330 and for no other purpose and that I will not permit the use or copying of such list for unauthorized purposes.

I hereby declare under the penalty of election falsification that the statements above are true to the best of my knowledge.

The penalty for election falsification is a Class IV felony.

.....

(Signature of person acquiring list)

Subscribed and sworn to before me this day of 20 . . .

.....

(Signature of officer)

.....

(Name and official title of officer)

(5) The Secretary of State, election commissioner, or county clerk shall provide, upon request and free of charge, a complete and current listing of all registered voters and their addresses to the Clerk of the United States District Court for the District of Nebraska. Such list shall be provided no later than December 31 of each even-numbered year.

(6) The Secretary of State, election commissioner, or county clerk shall provide, upon request and free of charge, a complete and current listing of all registered voters containing only the information authorized under subsection (3) of this section to the state party headquarters of each political party and to the county chairperson of each political party.

Source: Laws 1994, LB 76, § 92; Laws 1995, LB 514, § 2; Laws 1997, LB 764, § 45; Laws 1999, LB 234, § 8; Laws 2015, LB575, § 10; Laws 2018, LB1065, § 5; Laws 2019, LB411, § 36.

ARTICLE 4

TIME OF ELECTIONS

Section

32-404. Political subdivisions; elections; how held; notice of filing deadlines; certifications required; forms.

32-405. Special election; when held.

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.

32-405 Special election; when held.

Any special election under the Election Act shall be held on the first Tuesday following the second Monday of the selected month unless otherwise specifically provided. No special election shall be held under the Election Act in April, May, June, October, November, or December of an even-numbered year unless it is held in conjunction with the statewide primary or general election. No special election shall be held under the Election Act in September of an even-numbered year except for a special election by a political subdivision pursuant to section 13-519 or 77-3444 to approve a property tax levy or exceed a property tax levy limitation. A special election for a Class III, IV, or V school

district which is located in whole or in part in a county in which a city of the primary or metropolitan class is located may be held in conjunction with the primary or general election for a city of the primary or metropolitan class which is governed by a home rule charter.

Source: Laws 2003, LB 521, § 4; Laws 2014, LB946, § 6; Laws 2020, LB1055, § 6.

Effective date November 14, 2020.

ARTICLE 5

OFFICERS AND ISSUES

(a) OFFICES AND OFFICEHOLDERS

Section

- 32-538. City with city manager plan of government; city council; members; nomination and election; terms.
- 32-539. City with commission plan of government; city council; members; nonpartisan ballot; mayor and council members; terms.
- 32-541. Repealed. Laws 2018, LB377, § 87.
- 32-542. Repealed. Laws 2018, LB377, § 87.
- 32-545. Class V school district; board of education members; districts; qualifications; terms; nonpartisan ballot.
- 32-546. Repealed. Laws 2018, LB377, § 87.
- 32-551. Regional metropolitan transit authority; terms.

(b) LOCAL ELECTIONS

- 32-552. Election districts; adjustment of boundaries; when; procedure; Class IV school district; Class V school district; districts.

(c) VACANCIES

- 32-566. Legislature; vacancy; how filled.
- 32-567. Vacancies; offices listed; how filled.
- 32-570. School board; 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; nomination and election; terms.

(1) In a city which adopts the city manager plan of government pursuant to the City Manager Plan of Government Act, the city council members shall be nominated at the statewide primary election and elected at the statewide general election.

(2) City 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 the city council members by wards, the number and boundaries of which are provided for in section 16-104. City council members shall serve for terms of four years or until their successors are elected and qualified. The city council members shall meet the qualifications found in sections 19-613 and 19-613.01.

(3) The first election under an ordinance changing the number of city council members or their manner of election shall take place at the next statewide primary and general elections. City 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 city council members or their manner of election, one-half or the bare majority of city

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 city 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 city council member is to be elected at large at such first election, such member shall serve for four years.

Source: Laws 1994, LB 76, § 134; Laws 2001, LB 71, § 2; Laws 2001, LB 730, § 3; Laws 2017, LB113, § 37; Laws 2019, LB193, § 240; Laws 2020, LB1003, § 184.

Operative date November 14, 2020.

Cross References

City Manager Plan of Government Act, see section 19-601.

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 the Municipal Commission Plan of Government Act, 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. Nomination and election of all council members shall be by nonpartisan ballot. The mayor shall be elected for a four-year term.

(2) If a city elects to adopt the commission plan of government, 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; Laws 2019, LB193, § 241.

Cross References

Municipal Commission Plan of Government Act, see section 19-401.

32-541 Repealed. Laws 2018, LB377, § 87.

32-542 Repealed. Laws 2018, LB377, § 87.

32-545 Class V school district; board of education members; districts; qualifications; terms; nonpartisan ballot.

(1) A member of the board of education of a Class V school district shall be elected from each district provided for in section 32-552. Such election shall be held on the date provided in subsection (2) of this section. The members of such board of education shall meet the qualifications found in sections 79-543 and 79-552.

(2) In 2014, candidates for election to such board of education from even-numbered districts shall be nominated at the statewide primary election and elected at the statewide general election and shall take office on the first Monday in January 2015. In 2016, candidates for election to such board of education from odd-numbered districts shall be nominated at the statewide primary election and elected at the statewide general election and shall take office on the first Monday in January 2017. Thereafter, all members shall be nominated at the statewide primary election and elected at the statewide general election, shall take office on the first Monday in January following their election, and shall serve terms of four years or until their successors are elected and qualified. Candidates for election to such board of education shall be nominated upon the nonpartisan ballot.

Source: Laws 1994, LB 76, § 141; Laws 1996, LB 900, § 1044; Laws 2013, LB125, § 1; Laws 2020, LB1055, § 7.
Effective date November 14, 2020.

32-546 Repealed. Laws 2018, LB377, § 87.

32-551 Regional metropolitan transit authority; terms.

(1) Members of the board of directors of a regional metropolitan transit authority shall be nominated at the statewide primary election and elected at the statewide general election following the effective date of the conversion of such transit authority established under the Transit Authority Law into a regional metropolitan transit authority as provided in section 18-808, and subsequently elected members shall be nominated at subsequent statewide primary elections and elected at subsequent statewide general elections. Candidates for election shall be nominated upon a nonpartisan ballot.

(2) Members elected to represent odd-numbered districts in the first election of board members shall be elected for two-year terms. Members elected to represent even-numbered districts in the first election of board members shall be elected for four-year terms. Members elected in subsequent elections shall be elected for four-year terms and until their successors are elected and qualified.

(3) Members shall take office on the first Thursday after the first Tuesday in January following their election, except that members appointed to fill vacancies shall take office immediately following administration of the oath of office.

Source: Laws 2019, LB492, § 36.

Cross References

Transit Authority Law, see section 14-1826.

(b) LOCAL ELECTIONS

32-552 Election districts; adjustment of boundaries; when; procedure; Class IV school district; Class V school district; districts.

(1) At least five months prior to an election, the governing board of any political subdivision requesting the adjustment of the boundaries of election

districts shall provide to the election commissioner or county clerk (a) written notice of the need and necessity of his or her office to perform such adjustments and (b) a revised election district boundary map that has been approved by the requesting political subdivision's governing board and subjected to all public review and challenge ordinances of the political subdivision.

(2) After the next federal decennial census, the election commissioner of the county in which the greater part of a Class IV school district is situated shall, subject to review by the school board, divide the school district into seven numbered districts, substantially equal in population as determined by the most recent federal decennial census. The election commissioner shall consider the location of schools within the district and their boundaries. The election commissioner shall adjust the boundaries of the election districts, subject to final review and adjustment by the school board, to conform to changes in the territory and population of the school district and also following each federal decennial census. Except when specific procedures are otherwise provided, section 32-553 shall apply to all Class IV school districts.

(3) For purposes of election of members to the board of education of a Class V school district:

(a)(i) The Legislature hereby divides such school district into nine numbered election districts of compact and contiguous territory and of as nearly equal population as may be practical. Each election district shall be entitled to one member on the board of education of such Class V school district. The Legislature adopts the official population figures and maps from the 2010 Census Redistricting (Public Law 94-171) TIGER/Line Shapefiles published by the United States Department of Commerce, Bureau of the Census. The numbers and boundaries of the election districts are designated and established by a map identified and labeled as OPS-13-002, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2013, LB125. Such districts are drawn using the boundaries of the Class V school district as they existed on February 12, 2013; (ii) the Clerk of the Legislature shall transfer possession of the map referred to in subdivision (a)(i) of this subsection to the Secretary of State and the election commissioner of the county in which the greater part of the school district is situated on February 12, 2013; (iii) when questions of interpretation of such election district boundaries arise, the map referred to in subdivision (a)(i) of this subsection in possession of such election commissioner shall serve as the indication of the legislative intent in drawing the election district boundaries; and (iv) the Secretary of State and such election commissioner shall also have available for viewing on his or her web site the map referred to in subdivision (a)(i) of this subsection identifying the boundaries for such election districts; and

(b) After the next federal decennial census, the election commissioner of the county in which the greater part of a Class V school district is situated shall divide the school district into nine numbered districts of compact and contiguous territory and of as nearly equal population as may be practical. The election commissioner shall adjust the boundaries of such districts, subject to final review and adjustment by the school board, to conform to changes in the territory of the school district and also following each federal decennial census.

Source: Laws 1994, LB 76, § 148; Laws 1997, LB 764, § 49; Laws 2002, LB 935, § 5; Laws 2013, LB125, § 2; Laws 2019, LB411, § 37; Laws 2020, LB1055, § 8.
Effective date November 14, 2020.

(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.

32-567 Vacancies; offices listed; how filled.

Vacancies in office shall be filled as follows:

(1) In state and judicial district offices and in the membership of any board or commission created by the state when no other method is provided, by the Governor;

(2) In county offices, by the county board;

(3) In the membership of the county board, by the county clerk, county attorney, and county treasurer;

(4) In the membership of the city council, according to section 32-568 or 32-569, as applicable;

(5) In township offices, by the township board or, if there are two or more vacancies on the township board, by the county board;

(6) In offices in public power and irrigation districts, according to section 70-615;

(7) In offices in natural resources districts, according to section 2-3215;

(8) In offices in community college areas, according to section 85-1514;

(9) In offices in educational service units, according to section 79-1217;

(10) In offices in hospital districts, according to section 23-3534;

(11) In offices in metropolitan utilities districts, according to section 14-2104;

(12) In membership on airport authority boards, according to section 3-502, 3-611, or 3-703, as applicable;

(13) In membership on the board of trustees of a road improvement district, according to section 39-1607;

(14) In membership on the council of a municipal county, by the council;

(15) For learning community coordinating councils, according to section 32-546.01; and

(16) For regional metropolitan transit authority boards, according to section 18-808.

Source: Laws 1994, LB 76, § 163; Laws 1996, LB 900, § 1046; Laws 2001, LB 142, § 38; Laws 2007, LB641, § 1; Laws 2014, LB946, § 10; Laws 2015, LB575, § 12; Laws 2019, LB492, § 37.

Cross References

Public Service Commission, vacancy, how filled, see section 75-103.

State Board of Education, vacancy, how filled, see section 79-314.

32-570 School board; vacancy; how filled.

(1) A vacancy in the membership of a school board shall occur as set forth in section 32-560 or in the case of absences, unless excused by a majority of the remaining members of the board, when a member is absent from the district for a continuous period of sixty days at one time or from more than two consecutive regular meetings of the board. The resignation of a member or any other reason for a vacancy shall be made a part of the minutes of the school board. The school board shall give notice of the date the vacancy occurred, the office vacated, and the length of the unexpired term (a) in writing to the election commissioner or county clerk and (b) by a notice published in a newspaper of general circulation in the school district.

(2) Except as provided in subsection (3) of this section, a vacancy in the membership of a school board resulting from any cause other than the expiration of a term shall be filled by appointment of a qualified registered voter by the remaining members of the board for the remainder of the unexpired term. A registered voter appointed pursuant to this subsection shall meet the same requirements as the member whose office is vacant.

(3) Any vacancy in the membership of a school board of a school district described in section 79-549 which does not nominate candidates at a primary election and elect members at the following general election shall be filled by appointment of a qualified registered voter by the remaining members of the board for the remainder of the unexpired term.

(4) If any school board fails to fill a vacancy on the board, the vacancy may be filled by election at a special election or school district meeting called for that purpose. Such election or meeting shall be called in the same manner and subject to the same procedures as other special elections or school district meetings.

(5) If there are vacancies in the offices of one-half or more of the members of a school board, the Secretary of State shall conduct a special school district election to fill such vacancies.

Source: Laws 1994, LB 76, § 166; Laws 1999, LB 272, § 15; Laws 2010, LB965, § 1; Laws 2012, LB878, § 3; Laws 2013, LB125, § 3; Laws 2016, LB874, § 1; Laws 2018, LB377, § 2.

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.

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.
- 32-604. Multiple office holding; when allowed.
- 32-606. Candidate filing form; filing period.
- 32-607. Candidate filing forms; contents; filing officers.
- 32-610. Partisan elections; candidate; requirements.
- 32-618. Nomination by petition; number of signatures required.
- 32-631. Petitions; signature verification; procedure.

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.

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.

Cross References

Nebraska Political Accountability and Disclosure Act, see section 49-1401.

32-604 Multiple office holding; when allowed.

(1) Except as provided in subsection (2) or (4) of this section, no person shall be precluded from being elected or appointed to or holding an elective office for the reason that he or she has been elected or appointed to or holds another elective office.

(2) No person serving as a member of the Legislature or in an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska shall simultaneously serve in any other elective office, except that such a person may simultaneously serve in another elective office which is filled at an election held in conjunction with the annual meeting of a public body.

(3) Whenever an incumbent serving as a member of the Legislature or in an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska assumes another elective office, except an elective office filled at an election held in conjunction with the annual meeting of a public body, the office first held by the incumbent shall be deemed vacant.

(4) No person serving in a high elective office shall simultaneously serve in any other high elective office, except that a county attorney may serve as the county attorney for more than one county if appointed under subsection (2) of section 23-1201.01.

(5) Notwithstanding subsection (4) of this section, any person holding more than one high elective office upon July 15, 2010, shall be entitled to serve the remainder of all terms for which he or she was elected or appointed.

(6) For purposes of this section, (a) elective office has the meaning found in section 32-109 and includes an office which is filled at an election held in conjunction with the annual meeting of a public body created by an act of the Legislature but does not include a member of a learning community coordinating council appointed pursuant to subsection (5) or (7) of section 32-546.01 prior to January 5, 2017, and (b) high elective office means a member of the Legislature, an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska, or a county, city, community college area, learning community, regional metropolitan transit authority, or school district elective office.

Source: Laws 1994, LB 76, § 172; Laws 1997, LB 221, § 3; Laws 2003, LB 84, § 2; Laws 2007, LB641, § 2; Laws 2008, LB1154, § 4; Laws 2010, LB951, § 2; Laws 2016, LB1067, § 5; Laws 2019, LB492, § 38.

32-606 Candidate filing form; filing period.

(1) Any candidate may place his or her name on the primary election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section 32-607. Except as otherwise provided in subsection (4) of this section, if a candidate for an elective office is an incumbent of any elective office, the filing period for filing the candidate filing form shall be between December 1 and February 15 prior to the date of the primary election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after February 15 of that election year. All other candidates shall file for office between December 1 and March 1 prior to the date of the primary election. A candidate filing form may be transmitted by facsimile for the offices listed in subdivision (1) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form is mailed to the filing officer with a legible postmark bearing a date on or prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(2) Any candidate for a township office in a county under township organization, the board of trustees of a village, the board of directors of a reclamation district, the county weed district board, the board of directors of a public power district receiving annual gross revenue of less than forty million dollars, or the board of an educational service unit may place his or her name on the general election ballot by filing a candidate filing form prescribed by the Secretary of

State as provided in section 32-607. Except as otherwise provided in subsection (4) of this section, if a candidate for an elective office is an incumbent of any elective office, the filing period for filing the candidate filing form shall be between December 1 and July 15 prior to the date of the general election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after July 15 of that election year. All other candidates shall file for office between December 1 and August 1 prior to the date of the general election. A candidate filing form may be transmitted by facsimile for the offices listed in subdivision (1) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form is mailed to the filing officer with a legible postmark bearing a date on or prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(3) Any city having a home rule charter may provide for filing deadlines for any person desiring to be a candidate for the office of council member or mayor.

(4) If a candidate for an elective office was appointed to an elective office to fill a vacancy after the deadline for an incumbent to file a candidate filing form in subsection (1) or (2) of this section but before the deadline for all other candidates, the candidate may file a candidate filing form for any office on or before the deadline for all other candidates.

Source: Laws 1994, LB 76, § 174; Laws 1996, LB 967, § 2; Laws 1997, LB 764, § 54; Laws 1999, LB 802, § 12; Laws 2007, LB641, § 3; Laws 2009, LB392, § 7; Laws 2011, LB449, § 4; Laws 2011, LB550, § 1; Laws 2013, LB125, § 4; Laws 2018, LB377, § 3; Laws 2020, LB1055, § 9.
Effective date November 14, 2020.

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, directors of metropolitan utilities 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; Laws 2019, LB411, § 38.

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.

32-618 Nomination by petition; number of signatures required.

(1) The number of signatures of registered voters needed to place the name of a candidate upon the nonpartisan ballot for the general election shall be as follows:

(a) For each nonpartisan office other than members of the Board of Regents of the University of Nebraska and board members of a Class III school district, at least ten percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the district or political subdivision in which the officer is to be elected, not to exceed two thousand;

(b) For members of the Board of Regents of the University of Nebraska, at least ten percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the regent district in which the officer is to be elected, not to exceed one thousand; and

(c) For board members of a Class III school district, at least twenty percent of the total number of votes cast for the board member receiving the highest

number of votes at the immediately preceding general election in the school district.

(2) The number of signatures of registered voters needed to place the name of a candidate for an office upon the partisan ballot for the general election shall be as follows:

(a) For each partisan office to be filled by the registered voters of the entire state, at least four thousand, and at least seven hundred fifty signatures shall be obtained in each congressional district in the state;

(b) For each partisan office to be filled by the registered voters of a county, at least twenty percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election within the county, not to exceed two thousand, except that the number of signatures shall not be required to exceed twenty-five percent of the total number of registered voters voting for the office at the immediately preceding general election; and

(c) For each partisan office to be filled by the registered voters of a political subdivision other than a county, at least twenty percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election within the political subdivision, not to exceed two thousand.

Source: Laws 1994, LB 76, § 186; Laws 1997, LB 764, § 62; Laws 2003, LB 181, § 5; Laws 2003, LB 461, § 3; Laws 2007, LB298, § 1; Laws 2011, LB399, § 1; Laws 2016, LB874, § 2; Laws 2019, LB411, § 39.

32-631 Petitions; signature verification; procedure.

(1) All petitions that are filed with the election commissioner or county clerk for signature verification shall be retained in the election office and shall be open to public inspection. Upon receipt of the pages of a petition, the election commissioner or county clerk shall issue a written receipt indicating the number of pages of the petition in his or her custody to the person filing the petition for signature verification. Petitions may be destroyed twenty-two months after the election to which they apply.

(2) The election commissioner or county clerk shall determine the validity and sufficiency of such petition by comparing the names, dates of birth if applicable, and addresses of the signers with the voter registration records to determine if the signers were registered voters on the date of signing the petition. If it is determined that a signer has affixed his or her signature more than once to any petition and that only one person is registered by that name, the election commissioner or county clerk shall strike from the pages of the petition all but one such signature. Only one of the duplicate signatures shall be added to the total number of valid signatures. All signatures, dates of birth, and addresses shall be presumed to be valid if the election commissioner or county clerk has found the signers to be registered voters on or before the date on which the petition was signed. This presumption shall not be conclusive and may be rebutted by any credible evidence which the election commissioner or county clerk finds sufficient.

(3) If the election commissioner or county clerk verifies signatures in excess of one hundred ten percent of the number necessary for the issue to be placed

on the ballot, the election commissioner or county clerk may cease verifying signatures and certify the number of signatures verified to the person who delivered the petitions for verification.

(4) If the number of signatures verified does not equal or exceed the number necessary to place the issue on the ballot 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 petition page number and line number where the signature is found. If the signature or address is challenged for a reason other than the nonregistration of the signer, the election commissioner or county clerk shall set forth the reasons for the challenge of the signature.

Source: Laws 1994, LB 76, § 199; Laws 1997, LB 460, § 3; Laws 1997, LB 764, § 66; Laws 2003, LB 444, § 8; Laws 2019, LB411, § 40.

ARTICLE 8

NOTICE, PUBLICATION, AND PRINTING OF BALLOTS

Section

32-802. Notice of election; contents.

32-803. Sample of official ballot; publication; requirements; rate; limitation.

32-816. Official ballots; write-in space provided; exceptions; requirements.

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.

32-803 Sample of official ballot; publication; requirements; rate; limitation.

(1) A sample of the official ballot shall be printed in one or more newspapers of general circulation in the county, city, or village as designated by the election commissioner, county clerk, city council, or village board. The sample shall be printed in English and in any other language required pursuant to the Voting Rights Language Assistance Act of 1992.

(2) Except for elections conducted in accordance with section 32-960, such publication shall be made not more than fifteen nor less than two days before the day of election, and the same shall appear in only one regular issue of each paper. For elections conducted in accordance with section 32-960, such publication shall be made not less than thirty days before the election.

(3) The form of the ballot so published shall conform in all respects to the form prescribed for official ballots as set forth in sections 32-806, 32-809, and 32-812, but larger or smaller type may be used. When paper ballots are not being used, a reduced-size facsimile of the official ballot shall be published as it appears on the voting system. Such publication shall include suitable instructions to the voters for casting their ballots using the voting system being used at the election.

(4) The rate charged by the newspapers and paid by the county board for the publication of such sample ballot shall not exceed the rate regularly charged for display advertising in such newspaper in which the publication is made.

Source: Laws 1994, LB 76, § 224; Laws 1997, LB 764, § 73; Laws 2003, LB 358, § 10; Laws 2019, LB411, § 41.

32-816 Official ballots; write-in space provided; exceptions; requirements.

(1) A blank space shall be provided at the end of each office division on the ballot for registered voters to fill in the name of any person for whom they wish to vote and whose name is not printed upon the ballot, except that at the primary election there shall be no write-in space for delegates to the county political party convention or delegates to the national political party convention. A square or oval shall be printed opposite each write-in space similar to the square or oval placed opposite other candidates and issues on the ballot. The square or oval shall be marked to vote for a write-in candidate whose name appears in the write-in space provided.

(2) The Secretary of State shall approve write-in space for optical-scan ballots and any other voting system authorized for use under the Election Act. Adequate provision shall be made for write-in votes sufficient to allow one write-in space for each office to be elected at any election except offices for which write-in votes are specifically prohibited. The write-in ballot shall clearly identify the office for which such write-in vote is cast. The write-in space shall be a part of the official ballot, may be on the envelope or a separate piece of paper from the printed portion of the ballot, and shall allow the voter adequate space to fill in the name of the candidate for whom he or she desires to cast his or her ballot.

Source: Laws 1994, LB 76, § 237; Laws 1997, LB 764, § 79; Laws 2001, LB 252, § 2; Laws 2003, LB 358, § 14; Laws 2010, LB852, § 1; Laws 2019, LB411, § 42.

ARTICLE 9

VOTING AND ELECTION PROCEDURES

Section	
32-901.	Ballots; voting procedure.
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32-901 Ballots; voting procedure.

(1) To vote for a candidate or on a ballot question using a paper ballot that is to be manually counted, the registered voter shall make a cross or other clear, discernable mark in the square opposite the name of every candidate, including write-in candidates, for whom he or she desires to vote and, in the case of a ballot question, opposite the answer he or she wishes to give. Making a cross or other clear, discernable mark in the square constitutes a valid vote.

(2) To vote for a candidate or on a ballot question using a ballot that is to be counted by optical scanner, the registered voter shall fill in the oval or other space provided opposite the name of every candidate, including write-in candidates, for whom he or she desires to vote and, in the case of a ballot question, opposite the answer he or she wishes to give. A mark in the oval or provided space that is discernable by the scanner constitutes a valid vote.

(3) To vote for a candidate or on a ballot question using a voting system with an electronic aspect authorized for use under the Election Act, the registered voter shall follow the instructions for using the voting system to cause a mark to be recorded opposite the candidate or ballot question response for which the voter wishes to vote. Causing such mark to be recorded does not constitute a valid vote. A paper ballot printed to reflect the voter's choices constitutes a valid vote.

Source: Laws 1994, LB 76, § 244; Laws 2003, LB 358, § 16; Laws 2005, LB 566, § 31; Laws 2019, LB411, § 43.

32-903 Precincts; creation; requirements; election commissioner or county clerk; powers and duties.

(1) The election commissioner or county clerk shall create precincts composed of compact and contiguous territory within the boundary lines of legislative districts. The precincts shall contain not less than seventy-five nor more than one thousand seven hundred fifty registered voters based on the number of voters voting at the last statewide general election, except that a precinct may contain less than seventy-five registered voters if in the judgment of the election commissioner or county clerk it is necessary to avoid creating an undue hardship on the registered voters in the precinct. The election commissioner or county clerk shall create precincts based on the number of votes cast at the immediately preceding presidential election or the current list of registered voters for the precinct. The election commissioner or county clerk shall revise and rearrange the precincts and increase or decrease them at such times as may be necessary to make the precincts contain as nearly as practicable not less than seventy-five nor more than one thousand seven hundred fifty registered voters voting at the last statewide general election. The election commissioner or county clerk shall, when necessary and possible, readjust precinct boundaries to coincide with the boundaries of cities, villages, and school districts which are divided into districts or wards for election purposes. The election commissioner or county clerk shall not make any precinct changes in precinct boundaries or divide precincts into two or more parts between the statewide primary and general elections unless he or she has been authorized to do so by the Secretary of State. If changes are authorized, the election commissioner or county clerk shall notify each state and local candidate affected by the change.

(2) The election commissioner or county clerk may alter and divide the existing precincts, except that when any city of the first class by ordinance divides any ward of such city into two or more voting districts or polling places, the election commissioner or county clerk shall establish precincts or polling places in conformity with such ordinance. No such alteration or division shall take place between the statewide primary and general elections except as provided in subsection (1) of this section.

Source: Laws 1994, LB 76, § 246; Laws 1997, LB 764, § 80; Laws 2003, LB 358, § 18; Laws 2005, LB 401, § 3; Laws 2011, LB449, § 8; Laws 2019, LB411, § 44.

32-904 Polling places; designation; changes; notification required.

(1) The election commissioner or county clerk shall designate the polling places for each precinct at which the registered voters of the precinct will cast their votes. Polling places representing different precincts may be combined at a single location when potential sites cannot be found, contracts for utilizing polling sites cannot be obtained, or a potential site is not accessible to handicapped persons as provided in section 32-907.

(2) When combining polling places at a single site for an election other than a special election, the election commissioner or county clerk shall clearly separate the polling places from each other and maintain separate receiving boards. When combining polling places at a single site for a special election, the election commissioner or county clerk may combine the polling places and receiving boards.

(3) Polling places shall not be changed between the statewide primary and general elections unless the election commissioner or county clerk has been authorized to make such change by the Secretary of State. If changes are authorized, the election commissioner or county clerk shall notify each state and local candidate affected by the change.

(4) Notwithstanding any other provision of the Election Act, the Secretary of State may adopt and promulgate rules and regulations, with the consent of the appropriate election commissioner or county clerk, for the establishment of polling places which may be used for voting pursuant to section 32-1041 for the twenty days preceding the day of election. Such polling places shall be in addition to the office of the election commissioner or county clerk and the polling places otherwise established pursuant to this section.

Source: Laws 1994, LB 76, § 247; Laws 1997, LB 764, § 81; Laws 2005, LB 401, § 4; Laws 2007, LB646, § 6; Laws 2019, LB411, § 45.

32-907 Polling places; accessibility requirements; Secretary of State; duties; training manual; training.

(1) All polling places shall be accessible to all registered voters and shall be in compliance with the federal Americans with Disabilities Act of 1990, as amended, and the federal Help America Vote Act of 2002, as amended. In addition, all polling places shall be modified or relocated to architecturally barrier-free buildings to provide unobstructed access to such polling places by people with physical limitations as required by this section. At least one voting booth shall be so constructed as to provide easy access for people with limitations, shall accommodate a wheelchair, and shall have a cover or barrier to provide privacy. The modifications required by this section may be of a temporary nature to provide such unobstructed access only on election day.

(2) All polling places shall meet the requirements of the federal Americans with Disabilities Act of 1990, as amended, and the federal Help America Vote Act of 2002, as amended, including, but not limited to, requirements for:

- (a) Parking;
- (b) An exterior route to an accessible entrance;
- (c) Polling place entrances;
- (d) The route from the entrance into the voting area;
- (e) Voting areas, including, but not limited to, a sign (i) that indicates that assistance is available, (ii) that contains the contact telephone number approved by the Secretary of State, and (iii) posted with visible lettering that is two inches, plus one-eighth inch per foot of viewing distance more than one hundred eighty inches from viewing points;
- (f) Ramps;
- (g) Lifts; and
- (h) Elevators.

(3) The Secretary of State shall develop, print, and make publicly available a training manual regarding accessibility requirements of the Election Act, the federal Americans with Disabilities Act of 1990, as amended, and the federal Help America Vote Act of 2002, as amended.

(4) The Secretary of State shall include in the biennial training for election commissioners and county clerks current standards for accessibility. All poll

workers shall receive training regarding accessibility between appointment and serving at an election.

Source: Laws 1994, LB 76, § 250; Laws 2019, LB411, § 46.

32-910 Polling places; obstructions prohibited; restrictions on access.

Any judge or clerk of election, precinct or district inspector, sheriff, or other peace officer shall clear the passageways and prevent obstruction of the doors or entries and provide free ingress to and egress from the polling place or building and shall arrest any person obstructing such passageways. Other than a registered voter engaged in receiving, preparing, or marking a ballot or depositing a ballot in a ballot box or a precinct-based optical scanner at the polling place, an election commissioner, a county clerk, a precinct inspector, a district inspector, a judge of election, a clerk of election, a member of a counting board, or a poll watcher as provided in section 32-1525, no person shall be permitted to be within eight feet of the ballot boxes or within eight feet of any ballots being counted by a counting board.

Source: Laws 1994, LB 76, § 253; Laws 1997, LB 764, § 82; Laws 2019, LB411, § 47; Laws 2020, LB1055, § 13.
Effective date November 14, 2020.

32-913 Precinct list of registered voters; sign-in register; preparation and use.

(1) The clerks of election shall have a list of registered voters of the precinct and a sign-in register at the polling place on election day. The list of registered voters shall be used for guidance on election day and may be in the form of a computerized, typed, or handwritten list or precinct registration cards. Registered voters of the precinct shall place and record their signature in the sign-in register before receiving any ballot. The list of registered voters and the sign-in register may be combined into one document at the discretion of the election commissioner or county clerk including, beginning July 1, 2019, by the use of an electronic poll book. If a combined document is used, a clerk of election may list the names of the registered voters in a separate book in the order in which they voted.

(2) Within twenty-four hours after the polls close in the precinct, the precinct inspector or one of the judges of election shall deliver the precinct list of registered voters and the precinct sign-in register to the election commissioner or county clerk. The election commissioner or county clerk shall file and preserve the list and register. No member of a receiving board who has custody or charge of the precinct list of registered voters and the precinct sign-in register shall permit the list or register to leave his or her possession from the time of receipt until he or she delivers them to another member of the receiving board or to the precinct inspector or judge of election for delivery to the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 256; Laws 1997, LB 764, § 83; Laws 2003, LB 358, § 21; Laws 2007, LB44, § 1; Laws 2018, LB1065, § 6.

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.

32-916 Ballots; initials required; approval; deposit in ballot box; procedure.

(1) Two judges of election or a precinct inspector and a judge of election shall affix their initials to the official ballots. The judge of election shall deliver a ballot to each registered voter after complying with section 32-914.

(2) After voting the ballot, the registered voter shall, as directed by the judge of election, fold his or her ballot or place the ballot in the ballot envelope or sleeve so as to conceal the voting marks and to expose the initials affixed on the ballot. The registered voter shall, without delay and without exposing the voting marks upon the ballot, deliver the ballot to the judge of election before leaving the enclosure in which the voting booths are placed.

(3) The judge of election shall, without exposing the voting marks on the ballot, approve the exposed initials upon the ballot and deposit the ballot in the ballot box or the precinct-based optical scanner in the presence of the registered voter. No judge of election shall deposit any ballot in a ballot box unless the ballot has been identified as having the appropriate initials. Any ballot not properly identified shall be rejected in the presence of the voter, the judge of election shall make a notation on the ballot Rejected, not properly identified, and another ballot shall be issued to the voter and the voter shall then be permitted to cast his or her ballot. If the ballot is in order, the judge shall deposit the ballot in the ballot box or the precinct-based optical scanner in the presence of the voter and the voter shall promptly leave the polling place. If a precinct uses a precinct-based optical scanner and a ballot is identified by the scanner as containing an overvote or an undervote, the voter shall be notified of the consequence of an overvote and the right to vote in the case of an undervote, whichever is applicable. The judges of election shall maintain the secrecy of the rejected ballots and shall cause the rejected ballots to be made up in a sealed packet. The judges of election shall endorse the packet with the words Rejected Ballots and the designation of the precinct. The judges of election shall sign the endorsement label and shall return the packet to the election commissioner or county clerk with a statement by the judges of election showing the number of ballots rejected.

(4) Upon receiving a provisional ballot as provided in section 32-915, the judge of election shall give the voter written information that states that the voter may determine if his or her vote was counted and, if not, the reason that the vote was not counted by accessing the system created pursuant to section 32-202 and the judge of election shall ensure that the appropriate information is on the outside of the envelope in which the ballot is enclosed or attached to the envelope, attach the statement required by section 32-915 if not contained on the envelope, and place the entire envelope into the ballot box. Upon receiving a provisional ballot as provided in section 32-915.01, the judge of

election shall comply with the requirements for a provisional ballot under this subsection, except that a provisional ballot cast pursuant to section 32-915.01 shall be kept separate from the other ballots cast at the election.

Source: Laws 1994, LB 76, § 259; Laws 1997, LB 764, § 88; Laws 1999, LB 802, § 15; Laws 2002, LB 1054, § 21; Laws 2003, LB 358, § 26; Laws 2003, LB 359, § 6; Laws 2005, LB 566, § 38; Laws 2019, LB411, § 48.

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.

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.

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.

Cross References

Forgery or false placement of initials or signatures on ballot pursuant to section, penalty, see section 32-1516.

32-952 Special election by mail; when.

If a political subdivision decides to place a candidate or an issue on the ballot at a special election, the election commissioner or county clerk may conduct the special election by mail as provided in section 32-953 or conduct the special election as otherwise authorized in the Election Act. In making a determination as to whether to conduct the election by mail, the election commissioner or county clerk shall consider whether all of the following conditions are met:

(1) All registered voters of the political subdivision or a district or ward of the political subdivision are eligible to vote on all candidates and issues submitted to the voters;

(2) Only registered voters of the political subdivision or the district or ward of the political subdivision are eligible to vote on all candidates and issues submitted to the voters;

(3) A review has been conducted of the costs and the expected voter turnout which may result from holding the election by mail;

(4) The election commissioner or county clerk has determined a date for the election which is not the same date as another election in which the registered voters of the political subdivision are eligible to vote;

(5) The election commissioner or county clerk has submitted a written plan to the Secretary of State within five business days after receiving the resolution from the political subdivision to hold the election; and

(6) The Secretary of State has approved a written plan for the conduct of the election, including a written timetable for the conduct of the election, submitted by the election commissioner or county clerk. The written plan shall include provisions for the notice of election to be published and for the application for ballots for early voting notwithstanding other statutory provisions regarding the content and publication of a notice of election or the application for ballots for early voting.

Source: Laws 1996, LB 964, § 5; Laws 2005, LB 98, § 24; Laws 2015, LB575, § 23; Laws 2019, LB411, § 49.

32-956 Special election by mail; replacement ballot; how obtained.

If a ballot is destroyed, spoiled, lost, or not received by the registered voter, the voter may obtain a replacement ballot from the election commissioner or county clerk by signing a statement verified on oath or affirmation on a form prescribed by the Secretary of State that the ballot was destroyed, spoiled, lost, or not received and delivering the statement to the election commissioner or county clerk by 5 p.m. on the date set for the election. If the voter mails the statement, the election commissioner or county clerk shall not deliver a replacement ballot to the voter unless the statement is received prior to the close of business on the second Friday preceding the election. If the election commissioner or county clerk receives a statement meeting the requirements of this section, he or she shall deliver a replacement ballot to the voter if the voter is present in the office or shall mail a replacement ballot to the voter at the

address shown on the statement. The election commissioner or county clerk shall keep a record of all replacement ballots issued under this section.

Source: Laws 1996, LB 964, § 9; Laws 2002, LB 935, § 15; Laws 2014, LB946, § 18; Laws 2019, LB411, § 50.

32-960 County with less than ten thousand inhabitants; elections conducted by mail; application for approval; contents; requirements for voting and returning ballots.

(1) In any county with less than ten thousand inhabitants, the county clerk may apply to the Secretary of State to mail ballots for all elections held after approval of the application to registered voters of any or all of the precincts in the county. The application shall include a written plan for the conduct of the election which complies with this section, including a timetable for the conduct of the election and provisions for the notice of election to be published and for the application for ballots for early voting notwithstanding other statutory provisions regarding the content and publication of a notice of election or the application for ballots for early voting. If the Secretary of State approves such application for one or more precincts in the county, the county clerk shall follow the applicable procedures in sections 32-953 to 32-959 for conducting elections by mail, except that the deadline for receipt of the ballots shall be 8 p.m. on the day of the election.

(2) The county clerk of a county that has an approved application pursuant to subsection (1) of this section:

(a) Shall allow a voter to return the ballot by hand-delivering it to the office of the county clerk;

(b) Shall maintain at least one secure ballot drop-box available for voters to deposit completed ballots twenty-four hours per day, starting at least ten days before the election through the deadline provided in subsection (1) of this section for the receipt of ballots;

(c) Shall maintain at least one in-person voting location at the office of the county clerk at which a voter in a precinct subject to a plan under this section approved by the Secretary of State may receive and cast a ballot which shall be open on the day of the election from the time for opening the polls pursuant to section 32-908 through the deadline provided in subsection (1) of this section for the receipt of ballots;

(d) Shall maintain in-person early voting opportunities as described in section 32-942; and

(e) May provide additional secure ballot drop-boxes and in-person voting locations that need not be open according to the requirements of subdivisions (b) and (c) of this subsection.

Source: Laws 2005, LB 401, § 9; Laws 2009, LB501, § 3; Laws 2020, LB1055, § 14.

Effective date November 14, 2020.

32-961 Poll watchers; eligibility; appointment; notice required.

(1)(a) To be eligible to be a poll watcher, an individual shall be either:

(i) A registered voter of this state; or

(ii) An individual representing a state-based, national, or international election monitoring organization.

(b) A candidate or a spouse of a candidate on the ballot at the election shall not be eligible for appointment as a poll watcher at such election.

(2) For poll watchers eligible under subdivision (1)(a)(i) of this section, any political party in Nebraska, a candidate for election in Nebraska not affiliated with a political party, an organization of persons interested in a question on the ballot, or a nonpartisan organization interested in Nebraska's elections and the elective process may appoint one or more poll watchers. Any such person or organization intending to appoint one or more poll watchers shall provide written notification to the election commissioner or county clerk of the county in which the poll watchers will be active on election day no later than the close of business on the Wednesday prior to election day. The notification shall include a list of appointed poll watchers and a list of the precincts that the poll watchers plan to observe and shall be provided prior to each election at which one or more poll watchers will be active. A poll watcher shall not be denied entry to a polling place because the poll watcher is not on the list or because the precinct is not on the list.

(3) For poll watchers eligible under subdivision (1)(a)(ii) of this section, any national or international election monitoring organization intending to appoint one or more poll watchers shall provide written notification to the Secretary of State no later than the close of business on the Wednesday prior to election day. The notification shall include a list of appointed poll watchers and a list of the counties and precincts to be observed and shall be provided prior to each election at which one or more poll watchers will be active.

Source: Laws 2020, LB1055, § 10.
Effective date November 14, 2020.

32-962 Poll watchers; credential; requirements; notice.

(1) For poll watchers eligible under subdivision (1)(a)(i) of section 32-961, the election commissioner or county clerk shall provide a credential as an election observer for each poll watcher for whom the election commissioner or county clerk receives notice of appointment under section 32-961. The election commissioner or county clerk may approve, as a credential, a name badge provided by the person who appointed the poll watcher if the name badge includes the name of the poll watcher and the name of the person or organization who appointed the poll watcher and if the name badge does not contain any campaign materials advocating a vote for or against any candidate, political party, or position on a ballot question.

(2) For poll watchers eligible under subdivision (1)(a)(ii) of section 32-961, the Secretary of State shall provide the national or international election monitoring organization with the proper credentials for each poll watcher for whom the Secretary of State receives notice. The Secretary of State shall also notify the election commissioner or county clerk in each of the counties in which the poll workers would be observing, and the notice shall include the name of the organization, a list of the poll watchers, a description of the credential that will be worn by the poll watchers, and the plans of the

organization for election day, including which counties and precincts the organization plans to observe.

Source: Laws 2020, LB1055, § 11.
Effective date November 14, 2020.

32-963 Poll watchers; display credential; sign register; authorized activities; protest conduct of election; ruling.

(1) Upon arrival at a polling place, a poll watcher shall display such poll watcher's credentials to the precinct inspector or precinct receiving board and sign the register of poll watchers. The election commissioner or county clerk shall provide a register at each precinct for poll watchers to sign. A poll watcher shall wear the approved credential with the poll watcher's name and the name of the person or organization who appointed the poll watcher while engaged in observing at a polling place.

(2) Subject to section 32-1525, a poll watcher may be present during all proceedings at the polling place governed by the Election Act and may watch and observe the performance in and around the polling place of all duties under the act.

(3) If a poll watcher or the person or organization who appointed the poll watcher wishes to protest any aspect of the conduct of the election, such poll watcher, person, or organization shall present such protest to the Secretary of State or to the election commissioner or county clerk of the applicable county. The Secretary of State, election commissioner, or county clerk shall rule on the issue within a reasonable amount of time relative to the issue presented.

Source: Laws 2020, LB1055, § 12.
Effective date November 14, 2020.

ARTICLE 10

COUNTING AND CANVASSING BALLOTS

Section

- 32-1002. Provisional ballots; when counted.
- 32-1007. Ballots; write-in votes; improper name; rejected.
- 32-1008. Write-in votes; totals; how reported.
- 32-1010. Ballots; where counted.
- 32-1012. Centralized location; partial returns; when; designation of location; counting procedure.
- 32-1013. Counting location; watchers; counting board members; oath; authorized observers.
- 32-1027. Counting board for early voting; appointment; duties.
- 32-1041. Voting and counting methods and locations authorized; approval required; when; electronic voting system prohibited.

32-1002 Provisional ballots; when counted.

(1) As the ballots are removed from the ballot box pursuant to sections 32-1012 to 32-1018, the receiving board shall separate the envelopes containing the provisional ballots from the rest of the ballots and deliver them to the election commissioner or county clerk.

(2) Upon receipt of a provisional ballot, the election commissioner or county clerk shall verify that the certificate on the front of the envelope or the form attached to the envelope is in proper form and that the certification has been signed by the voter.

(3) The election commissioner or county clerk shall also (a) verify that such person has not voted anywhere else in the county or been issued a ballot for early voting, (b) investigate whether any credible evidence exists that the person was properly registered to vote in the county before the deadline for registration for the election, (c) investigate whether any information has been received pursuant to section 32-308, 32-309, 32-310, or 32-324 that the person has resided, registered, or voted in any other county or state since registering to vote in the county, and (d) upon determining that credible evidence exists that the person was properly registered to vote in the county, make the appropriate changes to the voter registration register by entering the information contained in the registration application completed by the voter at the time of voting a provisional ballot.

(4) A provisional ballot cast by a voter pursuant to section 32-915 shall be counted if:

(a) Credible evidence exists that the voter was properly registered in the county before the deadline for registration for the election;

(b) The voter has resided in the county continuously since registering to vote in the county;

(c) The voter has not voted anywhere else in the county or has not otherwise voted early using a ballot for early voting;

(d) The voter has completed a registration application prior to voting as prescribed in subsection (6) of this section and:

(i) The residence address provided on the registration application completed pursuant to subdivision (1)(e) of section 32-915 is located within the precinct in which the person voted; and

(ii) If the voter is voting in a primary election, the party affiliation provided on the registration application completed prior to voting the provisional ballot is the same party affiliation that appears on the voter's voter registration record based on his or her previous registration application; and

(e) The certification on the front of the envelope or form attached to the envelope is in the proper form and signed by the voter.

(5) A provisional ballot cast by a voter pursuant to section 32-915 shall not be counted if:

(a) The voter was not properly registered in the county before the deadline for registration for the election;

(b) Information has been received pursuant to section 32-308, 32-309, 32-310, or 32-324 that the voter has resided, registered, or voted in any other county or state since registering to vote in the county in which he or she cast the provisional ballot;

(c) Credible evidence exists that the voter has voted elsewhere or has otherwise voted early;

(d) The voter failed to complete and sign a registration application pursuant to subsection (6) of this section and subdivision (1)(e) of section 32-915;

(e) The residence address provided on the registration application completed pursuant to subdivision (1)(e) of section 32-915 is in a different county or in a different precinct than the county or precinct in which the voter voted;

(f) If the voter is voting in a primary election, the party affiliation on the registration application completed prior to voting the provisional ballot is

different than the party affiliation that appears on the voter’s voter registration record based on his or her previous registration application; or

(g) The voter failed to complete and sign the certification on the envelope or form attached to the envelope pursuant to subsection (3) of section 32-915.

(6) An error or omission of information on the registration application or the certification required under section 32-915 shall not result in the provisional ballot not being counted if:

(a)(i) The errant or omitted information is contained elsewhere on the registration application or certification; or

(ii) The information is not necessary to determine the eligibility of the voter to cast a ballot; and

(b) Both the registration application and the certification are signed by the voter.

(7) Upon determining that the voter’s provisional ballot is eligible to be counted, the election commissioner or county clerk shall remove the ballot from the envelope without exposing the marks on the ballot and shall place the ballot with the ballots to be counted by the county canvassing board.

(8) The election commissioner or county clerk shall notify the system administrator of the system created pursuant to section 32-202 as to whether the ballot was counted and, if not, the reason the ballot was not counted.

(9) The verification and investigation shall be completed within seven business days after the election.

Source: Laws 1994, LB 76, § 296; Laws 1999, LB 234, § 13; Laws 2002, LB 1054, § 23; Laws 2003, LB 358, § 30; Laws 2005, LB 566, § 53; Laws 2007, LB646, § 10; Laws 2010, LB325, § 7; Laws 2014, LB661, § 15; Laws 2019, LB411, § 51.

32-1007 Ballots; write-in votes; improper name; rejected.

If only the last name of a person is in the write-in space on the ballot and there is more than one person in the county having the same last name, the counting board shall reject the ballot for that office unless the last name is reasonably close to the proper spelling of the last name of a candidate engaged in or pursuing a write-in campaign pursuant to section 32-615. The counting board shall make the following notation on the rejected ballot: Rejected for the office of, no first or generally recognized name.

Source: Laws 1994, LB 76, § 301; Laws 1999, LB 571, § 10; Laws 2001, LB 252, § 3; Laws 2003, LB 358, § 33; Laws 2013, LB349, § 5; Laws 2018, LB377, § 4; Laws 2019, LB411, § 52.

32-1008 Write-in votes; totals; how reported.

If the write-in vote in the county for a person pursuing a write-in campaign pursuant to section 32-615 or 32-633 totals less than five percent of the vote for such office in the county and the election commissioner or county clerk believes that such vote will not impact the outcome of the election, the number of write-in votes for that office may be counted and listed together as one total.

Source: Laws 1994, LB 76, § 302; Laws 1999, LB 571, § 11; Laws 2013, LB349, § 6; Laws 2019, LB411, § 53.

32-1010 Ballots; where counted.

Ballots shall be counted at a centralized location or at polling places as provided in sections 32-1012 to 32-1018. If counting takes place at a centralized location, the receiving board shall deliver the ballot box and other election materials to the centralized location as directed by the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 304; Laws 2007, LB646, § 12; Laws 2019, LB411, § 54.

32-1012 Centralized location; partial returns; when; designation of location; counting procedure.

(1) In counties using optical scanners to count the ballots at a centralized location, the election commissioner or county clerk may arrange to have partial returns delivered, properly locked or sealed, to the centralized location or locations at any time desired after the opening of the polls if at least twenty-five ballots have been cast since any prior delivery of ballots. The election commissioner or county clerk shall designate the location or locations for counting the ballots and may designate a location or locations in any county. Upon completion of the count, the ballots shall be conveyed under supervision of the election commissioner or county clerk to the office of such official. If for any reason it becomes impracticable to count all or a part of the ballots with optical scanners, the election commissioner or county clerk may direct that the ballots be counted manually following as closely as possible the provisions governing the manual counting of ballots.

(2) In counties using optical scanners to count the ballots at polling places, the election commissioner or county clerk may arrange to have partial returns delivered, properly locked, sealed, or digitally secured, to the election office at any time desired after the opening of the polls if at least twenty-five ballots have been cast since any prior delivery of partial returns. The election commissioner or county clerk shall designate polling places as locations for counting the ballots. Upon completion of the count, the ballots shall be conveyed under supervision of the election commissioner or county clerk to the office of such official. If for any reason it becomes impracticable to count all or a part of the ballots with optical scanners, the election commissioner or county clerk may direct that the ballots be counted manually following as closely as possible the provisions governing the manual counting of ballots.

Source: Laws 1994, LB 76, § 306; Laws 2003, LB 358, § 34; Laws 2019, LB411, § 55.

32-1013 Counting location; watchers; counting board members; oath; authorized observers.

(1) In each counting location, watchers may be appointed to be present and observe the counting of ballots. Each political party shall be entitled to one watcher at each location appointed and supplied with credentials by the county central committee of such political party. The district court having jurisdiction over any such county may appoint additional watchers for any location.

(2) The watchers and the members of the counting board shall take the following oath administered by the election commissioner or county clerk or an election official designated by the election commissioner or county clerk: I do solemnly swear that I will not in any manner make known to anyone other than

duly authorized election officials the results of the votes as they are being counted until the polls have officially closed and the summary of votes cast is delivered to the election commissioner or county clerk.

(3) Except for polling places using precinct-based optical scanners, all other persons shall be excluded from the place where the counting is being conducted except for observers authorized by the election commissioner or county clerk. No such observer shall be connected with any candidate, political party, or measure on the ballot.

Source: Laws 1994, LB 76, § 307; Laws 2019, LB411, § 56.

32-1027 Counting board for early voting; appointment; duties.

(1) The election commissioner or county clerk shall appoint two or more registered voters to the counting board for early voting. One registered voter shall be appointed from the political party casting the highest number of votes for Governor or for President of the United States in the county in the immediately preceding general election, and one registered voter shall be appointed from the political party casting the next highest vote for such office. The election commissioner or county clerk may appoint additional registered voters to serve on the counting board and may appoint registered voters to serve in case of a vacancy among any of the members of the counting board. Such appointees shall be balanced between the political parties and may include registered voters unaffiliated with any political party. The counting board may begin carrying out its duties not earlier than the second Friday before the election and shall meet as directed by the election commissioner or county clerk.

(2) The counting board shall place all identification envelopes in order and shall review each returned identification envelope pursuant to verification procedures prescribed in subsections (3) and (4) of this section.

(3) In its review, the counting board shall determine if:

(a) The voter has provided his or her name, residence address, and signature on the voter identification envelope;

(b) The ballot has been received from the voter who requested it and the residence address is the same address provided on the voter's request for a ballot for early voting, by comparing the information provided on the identification envelope with information recorded in the record of early voters or the voter's request;

(c) A completed and signed registration application has been received from the voter by the deadline in section 32-302, 32-321, or 32-325 or by the close of the polls pursuant to section 32-945;

(d) An identification document has been received from the voter not later than the close of the polls on election day if required pursuant to section 32-318.01; and

(e) A completed and signed registration application and oath has been received from the voter by the close of the polls on election day if required pursuant to section 32-946.

(4) On the basis of its review, the counting board shall determine whether the ballot shall be counted or rejected as follows:

(a) A ballot received from a voter who was properly registered on or prior to the deadline for registration pursuant to section 32-302 or 32-321 shall be accepted for counting without further review if:

(i) The name on the identification envelope appears to be that of a registered voter to whom a ballot for early voting has been issued or sent;

(ii) The residence address provided on the identification envelope is the same residence address at which the voter is registered or is in the same precinct and subdivision of a precinct, if any; and

(iii) The identification envelope has been signed by the voter;

(b) In the case of a ballot received from a voter who was not properly registered prior to the deadline for registration pursuant to section 32-302 or 32-321, the ballot shall be accepted for counting if:

(i) A valid registration application completed and signed by the voter has been received by the election commissioner or county clerk prior to the close of the polls on election day;

(ii) The name on the identification envelope appears to be that of the person who requested the ballot;

(iii) The residence address provided on the identification envelope and on the registration application is the same as the residence address as provided on the voter's request for a ballot for early voting; and

(iv) The identification envelope has been signed by the voter;

(c) In the case of a ballot received from a voter without a residence address who requested a ballot pursuant to section 32-946, the ballot shall be accepted for counting if:

(i) The name on the identification envelope appears to be that of a registered voter to whom a ballot has been sent;

(ii) A valid registration application completed and signed by the voter, for whom the residence address is deemed to be the address of the office of the election commissioner or county clerk pursuant to section 32-946, has been received by the election commissioner or county clerk prior to the close of the polls on election day;

(iii) The oath required pursuant to section 32-946 has been completed and signed by the voter and received by the election commissioner or county clerk by the close of the polls on election day; and

(iv) The identification envelope has been signed by the voter; and

(d) In the case of a ballot received from a registered voter required to present identification before voting pursuant to section 32-318.01, the ballot shall be accepted for counting if:

(i) The name on the identification envelope appears to be that of a registered voter to whom a ballot has been issued or sent;

(ii) The residence address provided on the identification envelope is the same address at which the voter is registered or is in the same precinct and subdivision of a precinct, if any;

(iii) A copy of an identification document authorized in section 32-318.01 has been received by the election commissioner or county clerk prior to the close of the polls on election day; and

(iv) The identification envelope has been signed by the voter.

(5) In opening the identification envelope or the return envelope to determine if registration applications, oaths, or identification documents have been enclosed by the voters from whom they are required, the counting board shall make a good faith effort to ensure that the ballot remains folded and that the secrecy of the vote is preserved.

(6) The counting board may, on the second Friday before the election, open all identification envelopes which are approved, and if the signature of the election commissioner or county clerk or his or her employee is on the ballot, the ballot shall be unfolded, flattened for purposes of using the optical scanner, and placed in a sealed container for counting as directed by the election commissioner or county clerk. At the discretion of the election commissioner or county clerk, the counting board may begin counting early ballots no earlier than twenty-four hours prior to the opening of the polls on the day of the election.

(7) If an identification envelope is rejected, the counting board shall not open the identification envelope. The counting board shall write Rejected on the identification envelope and the reason for the rejection. If the ballot is rejected after opening the identification envelope because of the absence of the official signature on the ballot, the ballot shall be reinserted in the identification envelope which shall be resealed and marked Rejected, no official signature. The counting board shall place the rejected identification envelopes and ballots in a container labeled Rejected Ballots and seal it.

(8) As soon as all ballots have been placed in the sealed container and rejected identification envelopes or ballots have been sealed in the Rejected Ballots container, the counting board shall count the ballots the same as all other ballots and an unofficial count shall be reported to the election commissioner or county clerk. No results shall be released prior to the closing of the polls on election day.

Source: Laws 1994, LB 76, § 321; Laws 1999, LB 802, § 18; Laws 2002, LB 935, § 16; Laws 2005, LB 98, § 26; Laws 2005, LB 566, § 54; Laws 2007, LB646, § 13; Laws 2020, LB1055, § 15.
Effective date November 14, 2020.

32-1041 Voting and counting methods and locations authorized; approval required; when; electronic voting system prohibited.

(1) The election commissioner or county clerk may use optical-scan ballots or voting systems approved by the Secretary of State to allow registered voters to cast their votes at any election. The election commissioner or county clerk may use vote counting devices and voting systems approved by the Secretary of State for tabulating the votes cast at any election. Vote counting devices shall include electronic counting devices such as optical scanners.

(2) No electronic voting system shall be used under the Election Act.

(3) Any new voting or counting system shall be approved by the Secretary of State prior to use by an election commissioner or county clerk. The Secretary of State may adopt and promulgate rules and regulations to establish different procedures and locations for voting and counting votes pursuant to the use of any new voting or counting system. The procedures shall be designed to preserve the safety and confidentiality of each vote cast and the secrecy and

security of the counting process, to establish security provisions for the prevention of fraud, and to ensure that the election is conducted in a fair manner.

Source: Laws 1994, LB 76, § 335; Laws 1997, LB 526, § 1; Laws 2003, LB 358, § 37; Laws 2005, LB 401, § 10; Laws 2007, LB646, § 14; Laws 2019, LB411, § 57.

ARTICLE 11

CONTEST OF ELECTIONS AND RECOUNTS

Section

- 32-1101. Contest of election other than member of Legislature; applicability of sections; grounds.
- 32-1105. Election contest; bond.
- 32-1106. Repealed. Laws 2018, LB744, § 30.
- 32-1107. Repealed. Laws 2018, LB744, § 30.
- 32-1111. Election contest; person holding certificate of election; powers and duties.
- 32-1112. Election contest; recount of votes; issuance of writ; certification of results.
- 32-1114. Election contest; recount of ballots; procedure.
- 32-1115. Election contest; rights of parties; recount of ballots; completion; certification.
- 32-1116. Election contests and recounts; costs.
- 32-1121. Recount requested by losing candidate; procedure; costs.

32-1101 Contest of election other than member of Legislature; applicability of sections; grounds.

(1) Sections 32-1101 to 32-1117 shall apply to contests of any election other than the election of a member of the Legislature. The contest of the election of a member of the Legislature is subject to the Legislative Qualifications and Election Contests Act.

(2) The election of any person to an elective office other than the Legislature, the location or relocation of a county seat, or any proposition submitted to a vote of the people may be contested:

(a) For misconduct, fraud, or corruption on the part of an election commissioner, a county clerk, an inspector, a judge or clerk of election, a member of a counting or canvassing board, or an employee of the election commissioner or county clerk sufficient to change the result;

(b) If the incumbent was not eligible to the office at the time of the election;

(c) If the incumbent has been convicted of a felony unless at the time of the election his or her civil rights have been restored;

(d) If the incumbent has given or offered to any voter or an election commissioner, a county clerk, an inspector, a judge or clerk of election, a member of a counting or canvassing board, or an employee of the election commissioner or county clerk any bribe or reward in money, property, or thing of value for the purpose of procuring his or her election;

(e) If illegal votes have been received or legal votes rejected at the polls sufficient to change the results;

(f) For any error of any board of canvassers in counting the votes or in declaring the result of the election if the error would change the result;

(g) If the incumbent is in default as a collector and custodian of public money or property; or

(h) For any other cause which shows that another person was legally elected.

(3) When the misconduct is on the part of an election commissioner, a county clerk, an inspector, a judge or clerk of election, a member of a counting or canvassing board, or an employee of the election commissioner or county clerk, it shall be insufficient to set aside the election unless the vote of the county, precinct, or township would change the result as to that office.

Source: Laws 1994, LB 76, § 344; Laws 2018, LB744, § 1.

Cross References

Legislative Qualifications and Election Contests Act, see section 50-1501.

32-1105 Election contest; bond.

The petitioner shall file in the proper court within ten days after filing of the petition a bond with security to be approved by the clerk of the court conditioned to pay all costs in case the election is confirmed.

Source: Laws 1994, LB 76, § 348; Laws 2018, LB744, § 2.

32-1106 Repealed. Laws 2018, LB744, § 30.

32-1107 Repealed. Laws 2018, LB744, § 30.

32-1111 Election contest; person holding certificate of election; powers and duties.

When a contested election is pending, the person holding the certificate of election may give bond, qualify and take the office at the time specified by law, and exercise the duties of the office until the contest is decided. If the contest is decided against him or her, the court shall order him or her to give up the office to the successful party in the contest and deliver to the successful party all books, records, papers, property, and effects pertaining to the office, and the court may enforce such order by attachment or other proper legal process.

Source: Laws 1994, LB 76, § 354; Laws 2018, LB744, § 3.

32-1112 Election contest; recount of votes; issuance of writ; certification of results.

Any court before which any contested election may be pending or the clerk of such court in vacation may issue a writ to the election commissioner or county clerk of the county in which the contested election was held commanding him or her to open, count, compare with the list of voters, and examine the ballots in his or her office which were cast at the election in contest and to certify the result of such count, comparison, and examination to the court from which the writ was issued.

Source: Laws 1994, LB 76, § 355; Laws 2018, LB744, § 4.

32-1114 Election contest; recount of ballots; procedure.

On the day fixed for opening the ballots pursuant to section 32-1113, the election commissioner or county clerk and the county canvassing board which officiated in making the official county canvass of the election returns shall proceed to open such ballots in the presence of the petitioner and the person whose election is contested or their attorneys. While the ballots are open and being examined, the election commissioner or county clerk shall exclude all other persons from the counting room. All persons witnessing the counting of

ballots shall be placed under oath requiring them not to disclose any fact discovered from such ballots except as stated in the certificate of the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 357; Laws 2018, LB744, § 5.

32-1115 Election contest; rights of parties; recount of ballots; completion; certification.

The election commissioner or county clerk shall permit the petitioner, the person whose election is being contested, and their attorneys to fully examine the ballots. The election commissioner or county clerk shall make return to the writ, under his or her hand and official seal, of all the facts which either of the parties may desire and which appear from the ballots to affect or relate to the contested election. After the examination of the ballots is completed, the election commissioner or county clerk shall again securely seal the ballots as they were and preserve and destroy them as provided by law in the same manner as if they had not been opened. The certificate of the election commissioner or county clerk certifying the total number of votes received by a candidate shall be prima facie evidence of the facts stated in the certificate, but the persons present at the examination of the ballots may be heard as witnesses to contradict the certificate.

Source: Laws 1994, LB 76, § 358; Laws 2018, LB744, § 6.

32-1116 Election contests and recounts; costs.

Except for election contests involving a member of the Legislature under the Legislative Qualifications and Election Contests Act, the cost of election contests under sections 32-1101 to 32-1117 and recounts under section 32-1118 shall be adjudged against the petitioner if he or she loses the contest, and if the petitioner wins the contest, the cost shall be adjudged against the state, county, or other political subdivision of which such contested office was a part. The payment of such costs shall be enforced as in civil cases.

Source: Laws 1994, LB 76, § 359; Laws 2018, LB744, § 7.

Cross References

Legislative Qualifications and Election Contests Act, see section 50-1501.

32-1121 Recount requested by losing candidate; procedure; costs.

If any candidate failed to be nominated or elected by more than the margin provided in section 32-1119, the losing candidate may submit a certified written request for a recount at his or her expense. The request shall be filed with the filing officer with whom the candidate filed for election not later than the tenth day after the county canvassing board or the board of state canvassers concludes. The recount shall be conducted as provided in section 32-1119. Prior to conducting the recount, the cost of the recount shall be determined by the election commissioner or county clerk and the requesting candidate shall be so notified. The candidate requesting the recount shall pay the estimated cost of the recount before the recount is scheduled to be conducted. If the recount involves more than one county, the election commissioner or county clerk shall certify the cost to the Secretary of State. The Secretary of State shall then notify the candidate of the determined cost, and the cost shall be paid before any recount is scheduled to be conducted. The candidate shall pay the cost on

demand to the county treasurer of each county involved, and such sums shall be placed in the county general fund to help defray the cost of the recount. If the actual expense is less than the determined cost, the candidate may file a claim with the county board for overpayment of the recount. If the recount determines the candidate to be the winner, all costs which he or she paid shall be refunded. Refunds shall be made from the county general fund.

Source: Laws 1994, LB 76, § 364; Laws 2019, LB411, § 58.

ARTICLE 12

ELECTION COSTS

Section

32-1203. Political subdivisions; election expenses; duties; determination of charge.

32-1203 Political subdivisions; election expenses; duties; determination of charge.

(1) Each city, village, school district, public power district, sanitary and improvement district, metropolitan utilities district, fire district, natural resources district, regional metropolitan transit authority, community college area, learning community coordinating council, educational service unit, hospital district, reclamation district, and library board shall pay for the costs of nominating and electing its officers as provided in subsection (2), (3), or (4) of this section. If a special issue is placed on the ballot at the time of the statewide primary or general election by any political subdivision, the political subdivision shall pay for the costs of the election as provided in subsection (2), (3), or (4) of this section. The districts listed in this subsection shall furnish to the Secretary of State and election commissioner or county clerk any maps and additional information which the election commissioner or county clerk may require in the proper performance of their duties in the conduct of elections and certification of results.

(2) The charge for each primary and general election shall be determined by (a) ascertaining the total cost of all chargeable costs as described in section 32-1202, (b) dividing the total cost by the number of precincts participating in the election to fix the cost per precinct, (c) prorating the cost per precinct by the inked ballot inch in each precinct for each political subdivision, and (d) totaling the cost for each precinct for each political subdivision, except that the minimum charge for each primary and general election for each political subdivision shall be one hundred dollars.

(3) In lieu of the charge determined pursuant to subsection (2) of this section, the election commissioner or county clerk may charge public power districts the fee for election costs set by section 70-610.

(4) In lieu of the charge determined pursuant to subsection (2) of this section, the election commissioner or county clerk may bill school districts directly for the costs of an election held under section 10-703.01.

Source: Laws 1994, LB 76, § 368; Laws 1997, LB 764, § 104; Laws 2008, LB1067, § 1; Laws 2011, LB449, § 11; Laws 2015, LB575, § 27; Laws 2019, LB492, § 39.

ARTICLE 13

RECALL

Section

- 32-1303. Recall petition; signers and circulators; requirements; notification.
32-1305. Petition papers; filing; signature verification; procedure.
32-1306. Filing clerk; notification required; recall election; when held; failure to order; effect.
32-1309. Recall petition filing form prohibited; when.

32-1303 Recall petition; signers and circulators; requirements; notification.

(1) A petition demanding that the question of removing an elected official or member of a governing body listed in section 32-1302 be submitted to the registered voters shall be signed by registered voters equal in number to at least thirty-five percent of the total vote cast for that office in the last general election, except that (a) for an office for which more than one candidate is chosen, the petition shall be signed by registered voters equal in number to at least thirty-five percent of the number of votes cast for the person receiving the most votes for such office in the last general election and (b) for a member of a governing body of a village, the petition shall be signed by registered voters of the village equal in number to at least forty-five percent of the total vote cast for the person receiving the most votes for that office in the last general election. The signatures shall be affixed to petition papers and shall be considered part of the petition.

(2) Petition circulators shall conform to the requirements of sections 32-629 and 32-630.

(3) The petition papers shall be procured from the filing clerk. Prior to the issuance of such petition papers, a recall petition filing form shall be signed and filed with the filing clerk by at least one registered voter. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The filing form shall state the name and office of the official sought to be removed, shall include in concise language of sixty words or less the reason or reasons for which recall is sought, and shall request that the filing clerk issue initial petition papers to the principal circulator for circulation. The filing clerk shall notify the official sought to be removed by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving a copy of the filing form at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address. If the official chooses, he or she may submit a defense statement in concise language of sixty words or less for inclusion on the petition. Any such defense statement shall be submitted to the filing clerk within twenty days after the official receives the copy of the filing form. The filing clerk shall prepare the petition papers within five business days after receipt of the defense statement. The principal circulator or circulators shall gather the petition papers within twenty days after being notified by the filing clerk that the petition papers are available. The filing clerk shall notify the principal circulator or circulators that the necessary signatures must be gathered within thirty days from the date of issuing the petitions.

(4) The filing clerk, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his or her office, the name of the principal circulator or circulators to whom the papers were issued, the

date of issuance, and the number of papers issued. The filing clerk shall certify on the papers the name of the principal circulator or circulators to whom the papers were issued and the date they were issued. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator or circulators who check out petitions from the filing clerk may distribute such petitions to persons who may act as circulators of such petitions.

(5) Petition signers shall conform to the requirements of sections 32-629 and 32-630. Each signer of a recall petition shall be a registered voter and qualified by his or her place of residence to vote for the office in question.

Source: Laws 1994, LB 76, § 376; Laws 1997, LB 764, § 106; Laws 2002, LB 1054, § 25; Laws 2003, LB 444, § 10; Laws 2004, LB 820, § 1; Laws 2008, LB39, § 4; Laws 2011, LB449, § 12; Laws 2018, LB377, § 5; Laws 2019, LB411, § 59.

32-1305 Petition papers; filing; signature verification; procedure.

(1) The principal circulator or circulators shall file, as one instrument, all petition papers comprising a recall petition for signature verification with the filing clerk within thirty days after the filing clerk issues the initial petition papers to the principal circulator or circulators as provided in section 32-1303.

(2) If the filing clerk is the subject of a recall petition, the signature verification process shall be conducted by two election commissioners or county clerks appointed by the Secretary of State. Mileage and expenses incurred by officials appointed pursuant to this subsection shall be reimbursed by the political subdivision involved in the recall.

(3) Within fifteen business days after the filing of the petition, the filing clerk shall ascertain whether or not the petition is signed by the requisite number of registered voters. No new signatures may be added after the initial filing of the petition papers. No signatures may be removed unless the filing clerk receives an affidavit signed by the person requesting his or her signature be removed before the petitions are filed with the filing clerk for signature verification. If the petition is found to be sufficient, the filing clerk shall attach to the petition a certificate showing the result of such examination. If the requisite number of signatures has not been gathered, the filing clerk shall file the petition in his or her office without prejudice to the filing of a new petition for the same purpose.

Source: Laws 1994, LB 76, § 378; Laws 2020, LB1055, § 16.
Effective date November 14, 2020.

32-1306 Filing clerk; notification required; recall election; when held; failure to order; effect.

(1) If the recall petition is found to be sufficient, the filing clerk shall notify the official whose removal is sought and the governing body of the affected political subdivision that sufficient signatures have been gathered. Notification of the official sought to be removed may be by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving such notice at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address.

(2) The governing body of the political subdivision shall, within twenty-one days after receipt of the notification from the filing clerk pursuant to subsection (1) of this section, order an election. The date of the election shall be the first available date that complies with section 32-405 and that can be certified to the election commissioner or county clerk at least fifty days prior to the election, except that if any other election is to be held in that political subdivision within ninety days after such notification, the governing body of the political subdivision shall provide for the holding of the recall election on the same day.

(3) All resignations shall be tendered as provided in section 32-562. If the official whose removal is sought resigns before the recall election is held, the governing body may cancel the recall election if the governing body notifies the election commissioner or county clerk of the cancellation at least twenty-four days prior to the election, otherwise the recall election shall be held as scheduled.

(4) If the governing body of the political subdivision fails or refuses to order a recall election within the time required, the election may be ordered by the district court having jurisdiction over a county in which the elected official serves. If a filing clerk is subject to a recall election, the Secretary of State shall conduct the recall election.

Source: Laws 1994, LB 76, § 379; Laws 2004, LB 820, § 2; Laws 2008, LB312, § 4; Laws 2011, LB449, § 13; Laws 2019, LB411, § 60; Laws 2020, LB1055, § 17.
Effective date November 14, 2020.

32-1309 Recall petition filing form prohibited; when.

No recall petition filing form shall be filed against an elected official within twelve months after a recall election has failed to remove him or her from office or within six months after the beginning of his or her term of office or within six months prior to the incumbent filing deadline for the office.

Source: Laws 1994, LB 76, § 382; Laws 2019, LB411, § 61.

ARTICLE 14

INITIATIVES, REFERENDUMS, AND ADVISORY VOTES

Section

- 32-1405. Initiative and referendum petitions; sponsors; filing required; Revisor of Statutes; Secretary of State; duties.
- 32-1407. Initiative petition; filing deadline; issue placed on ballot; when; referendum petition; filing deadline; affidavit of sponsor.
- 32-1409. Initiative and referendum petitions; signature verification; procedure; certification; Secretary of State; duties.
- 32-1412. Initiative and referendum measures; refusal of Secretary of State to place on ballot; jurisdiction of district court; parties; appeal.

32-1405 Initiative and referendum petitions; sponsors; filing required; Revisor of Statutes; Secretary of State; duties.

(1) Prior to obtaining any signatures on an initiative or referendum petition, a statement of the object of the petition and the text of the measure shall be filed with the Secretary of State together with a sworn statement containing the names and street addresses of every person, corporation, or association sponsoring the petition.

(2) Upon receipt of the filing, the Secretary of State shall transmit the text of the proposed measure to the Revisor of Statutes. The Revisor of Statutes shall review the proposed measure and suggest changes as to form and draftsmanship. The revisor shall complete the review within ten days after receipt from the Secretary of State. The Secretary of State shall provide the results of the review and suggested changes to the sponsor but shall otherwise keep the proposed measure and the review confidential for five days after receipt of the review by the sponsor. The Secretary of State shall then maintain the proposed measure and the opinion as public information and as a part of the official record of the initiative. The suggested changes may be accepted or rejected by the sponsor.

(3) The Secretary of State shall prepare five camera-ready copies of the petition from the information filed by the sponsor and any changes accepted by the sponsor and shall provide the copies to the sponsor within five business days after receipt of the review required in subsection (2) of this section. The sponsor shall print the petitions to be circulated from the forms provided. Prior to circulation, the sponsor shall file a final blank copy of the petition to be circulated with the Secretary of State.

Source: Laws 1994, LB 76, § 387; Laws 1995, LB 337, § 5; Laws 2019, LB411, § 62.

32-1407 Initiative petition; filing deadline; issue placed on ballot; when; referendum petition; filing deadline; affidavit of sponsor.

(1) Initiative petitions shall be filed in the office of the Secretary of State at least four months prior to the general election at which the proposal would be submitted to the voters.

(2) When a copy of the form of any initiative petition is filed with the Secretary of State prior to obtaining signatures, the issue presented by such petition shall be placed before the voters at the next general election occurring at least four months after the date that such copy is filed if the signed petitions are found to be valid and sufficient. All signed initiative petitions shall become invalid on the date of the first general election occurring at least four months after the date on which the copy of the form is filed with the Secretary of State.

(3) Petitions invoking a referendum shall be filed in the office of the Secretary of State within ninety days after the Legislature at which the act sought to be referred was passed has adjourned sine die or has adjourned for more than ninety days.

(4) At the time of filing the signed petitions, at least one sponsor shall sign an affidavit certifying that the petitions contain a sufficient number of signatures to place the issue on the ballot if such number of signatures were found to be valid.

Source: Laws 1994, LB 76, § 389; Laws 2019, LB411, § 63.

32-1409 Initiative and referendum petitions; signature verification; procedure; certification; Secretary of State; duties.

(1) Upon the receipt of the petitions, the Secretary of State, with the aid and assistance of the election commissioner or county clerk, shall determine the validity and sufficiency of signatures on the pages of the filed petition. The Secretary of State shall deliver the various pages of the filed petition to the

election commissioner or county clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Upon receipt of the pages of the petition, the election commissioner or county clerk shall issue to the Secretary of State a written receipt that the pages of the petition are in the custody of the election commissioner or county clerk. The election commissioner or county clerk shall determine if each signer was a registered voter on or before the date on which the petition was required to be filed with the Secretary of State. The election commissioner or county clerk shall compare the signer's signature, printed name, date of birth, street name and number or voting precinct, and city, village, or post office address with the voter registration records to determine whether the signer was a registered voter. The determination of the election commissioner or county clerk may be rebutted by any credible evidence which the election commissioner or county clerk finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity of such petition, the sufficiency of such petition, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the petition process. If the Secretary of State receives reports from a sufficient number of the counties that signatures in excess of one hundred ten percent of the number necessary to place the issue on the ballot have been verified, the Secretary of State may instruct the election commissioners and county clerks in all counties to stop verifying signatures and certify the number of signatures verified as of receipt of the instruction from the Secretary of State.

(2) Upon completion of the determination of registration, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the petition page number and line number where the name is found, and if the reason for the invalidity of the signature or address is other than the nonregistration of the signer, the election commissioner or county clerk shall set forth the reason for the invalidity of the signature. If the election commissioner or county clerk determines that a signer has affixed his or her signature more than once to any page or pages of the petition and that only one person is registered by that name, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name of the duplicate signature and shall count only the earliest dated signature. The election commissioner or county clerk shall deliver all pages of the petition and the certifications to the Secretary of State within forty days after the receipt of such pages from the Secretary of State. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. The Secretary of State may grant to the election commissioner or county clerk an additional ten days to return all pages of the petition in extraordinary circumstances.

(3) Upon receipt of the pages of the petition, the Secretary of State shall issue a written receipt indicating the number of pages of the petition that are in his or her custody. When all the petitions and certifications have been received by the Secretary of State, he or she shall strike from the pages of the petition all but the earliest dated signature of any duplicate signatures and such stricken signatures shall not be added to the total number of valid signatures. Not more than twenty signatures on one sheet shall be counted. All signatures secured in a manner contrary to sections 32-1401 to 32-1416 shall not be counted. Clerical and technical errors in a petition shall be disregarded if the forms prescribed in

sections 32-1401 to 32-1403 are substantially followed. The Secretary of State shall total the valid signatures and determine if constitutional and statutory requirements have been met. The Secretary of State shall immediately serve a copy of such determination by certified or registered mail upon the person filing the initiative or referendum petition. If the petition is found to be valid and sufficient, the Secretary of State shall proceed to place the measure on the general election ballot.

(4) The Secretary of State may adopt and promulgate rules and regulations for the issuance of all necessary forms and procedural instructions to carry out this section.

Source: Laws 1994, LB 76, § 391; Laws 1995, LB 337, § 6; Laws 1997, LB 460, § 8; Laws 2007, LB311, § 1; Laws 2019, LB411, § 64.

32-1412 Initiative and referendum measures; refusal of Secretary of State to place on ballot; jurisdiction of district court; parties; appeal.

(1) If the Secretary of State refuses to place on the ballot any measure proposed by an initiative petition presented at least four months preceding the date of the election at which the proposed law or constitutional amendment is to be voted upon or a referendum petition presented within ninety days after the Legislature enacting the law to which the petition applies adjourns sine die or for a period longer than ninety days, any resident may apply, within ten days after such refusal, to the district court of Lancaster County for a writ of mandamus. If it is decided by the court that such petition is legally sufficient, the Secretary of State shall order the issue placed upon the ballot at the next general election.

(2) On a showing that an initiative or referendum petition is not legally sufficient, the court, on the application of any resident, may enjoin the Secretary of State and all other officers from certifying or printing on the official ballot for the next general election the ballot title and number of such measure. If a suit is filed against the Secretary of State seeking to enjoin him or her from placing the measure on the official ballot, the person who is the sponsor of record of the petition shall be a necessary party defendant in such suit.

(3) Such suits shall be advanced on the trial docket and heard and decided by the court as quickly as possible. Either party may appeal to the Court of Appeals within ten days after a decision is rendered. The appeal procedures described in the Administrative Procedure Act shall not apply to this section.

(4) The district court of Lancaster County shall have jurisdiction over all litigation arising under sections 32-1401 to 32-1416.

Source: Laws 1994, LB 76, § 394; Laws 2018, LB193, § 69.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 15

VIOLATIONS AND PENALTIES

Section

32-1524. Electioneering; circulation of petitions; prohibited acts; penalty.

32-1525. Polling and interviews; poll watchers; prohibited acts; penalty.

32-1524 Electioneering; circulation of petitions; prohibited acts; penalty.

(1) For purposes of this section:

(a) Electioneering means the deliberate, visible display or audible or physical dissemination of information for the purpose of advocating for or against:

(i) Any candidate on the ballot for the election at which such display or dissemination is occurring;

(ii) Any elected officeholder of a state constitutional office or federal office at the time of the election at which such display or dissemination is occurring;

(iii) Any political party on the ballot for the election at which such display or dissemination is occurring; or

(iv) Any measure on the ballot for the election at which such display or dissemination is occurring; and

(b) Information includes:

(i) Such a candidate's name, likeness, logo, or symbol;

(ii) Such a ballot measure's number, title, subject matter, logo, or symbol;

(iii) A button, hat, pencil, pen, shirt, sign, or sticker containing information prohibited by this section;

(iv) Audible information prohibited by this section; and

(v) Literature or any writing or drawing referring to a candidate, officeholder, or ballot measure described in subdivision (a) of this subsection.

(2) No judge or clerk of election or precinct or district inspector shall do any electioneering while acting as an election official.

(3) No person shall do any electioneering or circulate petitions within any polling place or any building designated for voters to cast ballots by the election commissioner or county clerk pursuant to the Election Act while the polling place or building is set up for voters to cast ballots or within two hundred feet of any such polling place or building except as otherwise provided in subsection (4) of this section.

(4) Subject to any local ordinance, a person may display yard signs on private property within two hundred feet of a polling place or building designated for voters to cast ballots if the property is not under common ownership with the property on which the polling place or building is located.

(5) Any person violating this section shall be guilty of a Class V misdemeanor.

Source: Laws 1994, LB 76, § 423; Laws 2006, LB 940, § 2; Laws 2016, LB874, § 7; Laws 2019, LB411, § 65.

32-1525 Polling and interviews; poll watchers; prohibited acts; penalty.

(1) No person shall conduct an exit poll, a public opinion poll, or any other interview with voters on election day seeking to determine voter preference within twenty feet of the entrance of any polling place or, if inside the polling place or building, within one hundred feet of any voting booth.

(2)(a) No poll watcher shall interfere with any voter in the preparation or casting of such voter's ballot or prevent any election worker from performing the worker's duties.

(b) A poll watcher shall not provide assistance to a voter as described in section 32-918 unless selected by the voter to provide assistance as provided in section 32-918.

(c) A poll watcher shall not engage in electioneering as defined in section 32-1524 while engaged in observing at a polling place.

(d) A poll watcher shall maintain a distance of at least eight feet from the sign-in table, the sign-in register, the polling booths, the ballot box, and any ballots which have not been cast, except that if the polling place is not large enough for a distance of eight feet, the judge of election shall post a notice of the minimum distance the poll watcher must maintain from the sign-in table, the sign-in register, the polling booths, the ballot box, and any ballots which have not been cast. The posted notice shall be clearly visible to the voters and shall be posted prior to the opening of the polls on election day. The minimum distance shall not be determined to exclude a poll watcher from being in the polling place.

(3) Any person violating this section shall be guilty of a Class V misdemeanor.

Source: Laws 1994, LB 76, § 424; Laws 2020, LB1055, § 18.
Effective date November 14, 2020.

CHAPTER 33

FEES AND SALARIES

Section	
33-101.	Secretary of State; fees.
33-102.	Notary public; fees.
33-106.	Clerk of the district court; fees; enumerated.
33-106.01.	Clerk of the district court; costs; record.
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.
33-131.	County officers; records; duties.
33-138.	Juror; compensation; mileage.
33-140.03.	Unclaimed witness fees; duty of county board to make examination; failure of clerk to pay; suit authorized to recover.

33-101 Secretary of State; fees.

There shall be paid to the Secretary of State the following fees:

- (1) For certificate or exemplification with seal, ten dollars;
- (2) For copies of records, for each page, a fee of one dollar;
- (3) For accessing records by electronic means:
 - (a) For batch requests of business entity information, fifteen dollars for up to one thousand business entities accessed and an additional fifteen dollars for each additional one thousand business entities accessed over one thousand;
 - (b) For information in the Secretary of State's Uniform Commercial Code Division data base, including records filed pursuant to the Uniform Commercial Code, Chapter 52, article 2, 5, 7, 9, 10, 11, 12, or 14, Chapter 54, article 2, or the Uniform State Tax Lien Registration and Enforcement Act, for batch requests searched by debtor location, fifteen dollars for up to one thousand records accessed and an additional fifteen dollars for each additional one thousand records accessed over one thousand;
 - (c) For an electronically transmitted certificate indicating whether a business is properly registered with the Secretary of State and authorized to do business in the state, six dollars and fifty cents;
 - (d) For the entire contents of the data base regarding corporations and the Uniform Commercial Code, but excluding electronic images, three hundred dollars weekly subscription rate, one thousand dollars monthly subscription rate for a twice-monthly service, and eight hundred dollars monthly subscription rate;
 - (e) For images of records accessed over the Internet or by other electronic means other than facsimile machine, forty-five cents for each page or image of a page, not to exceed two thousand dollars per request for batch requests; and
 - (f) For the entire contents of the image data base regarding corporations and the Uniform Commercial Code, eight hundred dollars monthly subscription rate;

(4) For taking acknowledgment, ten dollars;

(5) For administering oath, ten dollars;

(6) For filings by for-profit corporations and associations required or permitted by law to file articles of incorporation or organization with the Secretary of State, the fees provided in section 21-205 unless otherwise specifically provided by law; and

(7) For filings by nonprofit corporations and associations required or permitted by law to file articles of incorporation or organization with the Secretary of State or for such a filing by any entity declared to be a corporation under section 21-608, the fees provided in section 21-1905 unless otherwise specifically provided by law.

The Secretary of State shall remit all fees collected pursuant to subdivisions (1), (2), and (4) through (7) of this section to the State Treasurer for credit to the Secretary of State Cash Fund. The Secretary of State shall remit all fees collected pursuant to subdivision (3) of this section to the State Treasurer for credit to the Records Management Cash Fund, and such fees shall be distributed as provided in any agreements between the State Records Board and the Secretary of State.

Source: Laws 1877, § 5, p. 196; Laws 1897, c. 72, § 1, p. 331; Laws 1907, c. 139, § 1, p. 445; Laws 1911, c. 128, § 1, p. 435; R.S.1913, § 2423; Laws 1921, c. 104, § 1, p. 374; C.S.1922, § 2364; C.S. 1929, § 33-103; R.S.1943, § 33-101; Laws 1947, c. 118, § 1, p. 349; Laws 1955, c. 63, § 12, p. 207; Laws 1961, c. 156, § 1, p. 477; Laws 1965, c. 183, § 1, p. 569; Laws 1969, c. 268, § 1, p. 1030; Laws 1975, LB 95, § 6; Laws 1982, LB 928, § 27; Laws 1994, LB 1004, § 2; Laws 1995, LB 109, § 214; Laws 1996, LB 681, § 194; Laws 1998, LB 924, § 18; Laws 2000, LB 929, § 23; Laws 2003, LB 524, § 20; Laws 2014, LB278, § 1; Laws 2014, LB749, § 279; Laws 2018, LB749, § 2; Laws 2020, LB910, § 11. Operative date July 1, 2021.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

33-102 Notary public; fees.

The Secretary of State shall be entitled to the sum of thirty dollars for receiving an application for a commission to act as a notary public pursuant to section 64-102. The Secretary of State shall be entitled to the sum of thirty dollars for receiving a renewal application pursuant to section 64-104.

The fees received by the Secretary of State pursuant to this section shall be remitted to the State Treasurer for credit seventy-five percent to the General Fund and twenty-five percent to the Secretary of State Cash Fund.

Source: Laws 1869, § 13, p. 25; R.S.1913, § 2424; Laws 1921, c. 99, § 1, p. 364; C.S.1922, § 2365; C.S.1929, § 33-104; R.S.1943, § 33-102; Laws 1945, c. 145, § 11, p. 494; Laws 1949, c. 93, § 4, p. 246; Laws 1963, c. 184, § 1, p. 625; Laws 1967, c. 396, § 1, p. 1241; Laws 1982, LB 928, § 28; Laws 1994, LB 1004, § 3; Laws 1995, LB 7, § 30; Laws 2009, First Spec. Sess., LB3, § 17; Laws 2020, LB910, § 12. Operative date July 1, 2021.

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 provided in this section. There shall be a docket fee of forty-two dollars for each civil and criminal case except:

(a) 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;

(b) For 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) 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 document and that the clerk shall be entitled to a fee of fifteen dollars for a records management fee which will be taxed as costs of the case.

(3) 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; Laws 2018, LB193, § 70; Laws 2020, LB912, § 16. Effective date November 14, 2020.

Cross References

Employment Security Law, see section 48-601.

Nebraska Workers' Compensation Act, see section 48-1,110.

33-106.01 Clerk of the district court; costs; record.

The clerk of the district court shall keep a record of the costs chargeable and taxable against each party in any suit pending in court. He or she at any time

may make out a statement of such fees specifying each item of the fees so charged and taxed under seal of the court, which fee bill, so made under the seal of the court, shall have the same force and effect as an execution. The sheriff to whom the fee bill shall be issued shall execute the same as an execution and have the same fees therefor. The clerk shall not enter on the record any fees of any officer claiming the same, unless such officer shall duly return an itemized bill of the same.

Source: R.S.1866, c. 19, § 3, p. 157; Laws 1877, § 4, 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(2), p. 253; Laws 1959, c. 140, § 5, p. 547; Laws 2018, LB193, § 71.

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.

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.

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.

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; Laws 2019, LB593, § 5.

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.

33-131 County officers; records; duties.

The sheriffs, county judges, county treasurers, county clerks, and registers of deeds of the several counties of the state shall each keep a book, unless authorized to use a computerized system, which shall be provided by the county, which shall be known as the fee book, which shall be a part of the records of such office, and in which shall be entered each and every item of fees collected showing in separate columns the name of the party from whom received, the date of receiving the same, the amount received, and for what service the same was charged. The clerks of the district court shall use the court's electronic case management system provided by the state which shall be the record of receipts and reimbursements.

Source: Laws 1877, § 3, p. 216; R.S.1913, § 2455; C.S.1922, § 2397; Laws 1925, c. 88, § 1, p. 267; C.S.1929, § 33-136; R.S.1943, § 33-131; Laws 1984, LB 679, § 12; Laws 2018, LB193, § 72.

33-138 Juror; compensation; mileage.

(1) Each member of a grand or petit jury in a district court or county court shall receive for his or her services thirty-five dollars for each day employed in the discharge of his or her duties and mileage at the rate provided in section 81-1176 for each mile necessarily traveled. No juror is entitled to pay for the days he or she is voluntarily absent or excused from service by order of the court. No juror is entitled to pay for nonjudicial days unless actually employed in the discharge of his or her duties as a juror on such days.

(2) In the event that any temporary release from service, other than that obtained by the request of a juror, occasions an extra trip or trips to and from the residence of any juror or jurors the court may, by special order, allow mileage for such extra trip or trips.

(3) Payment of jurors for service in the district and county courts shall be made by the county.

(4) A juror may voluntarily waive payment under this section for his or her service as a juror.

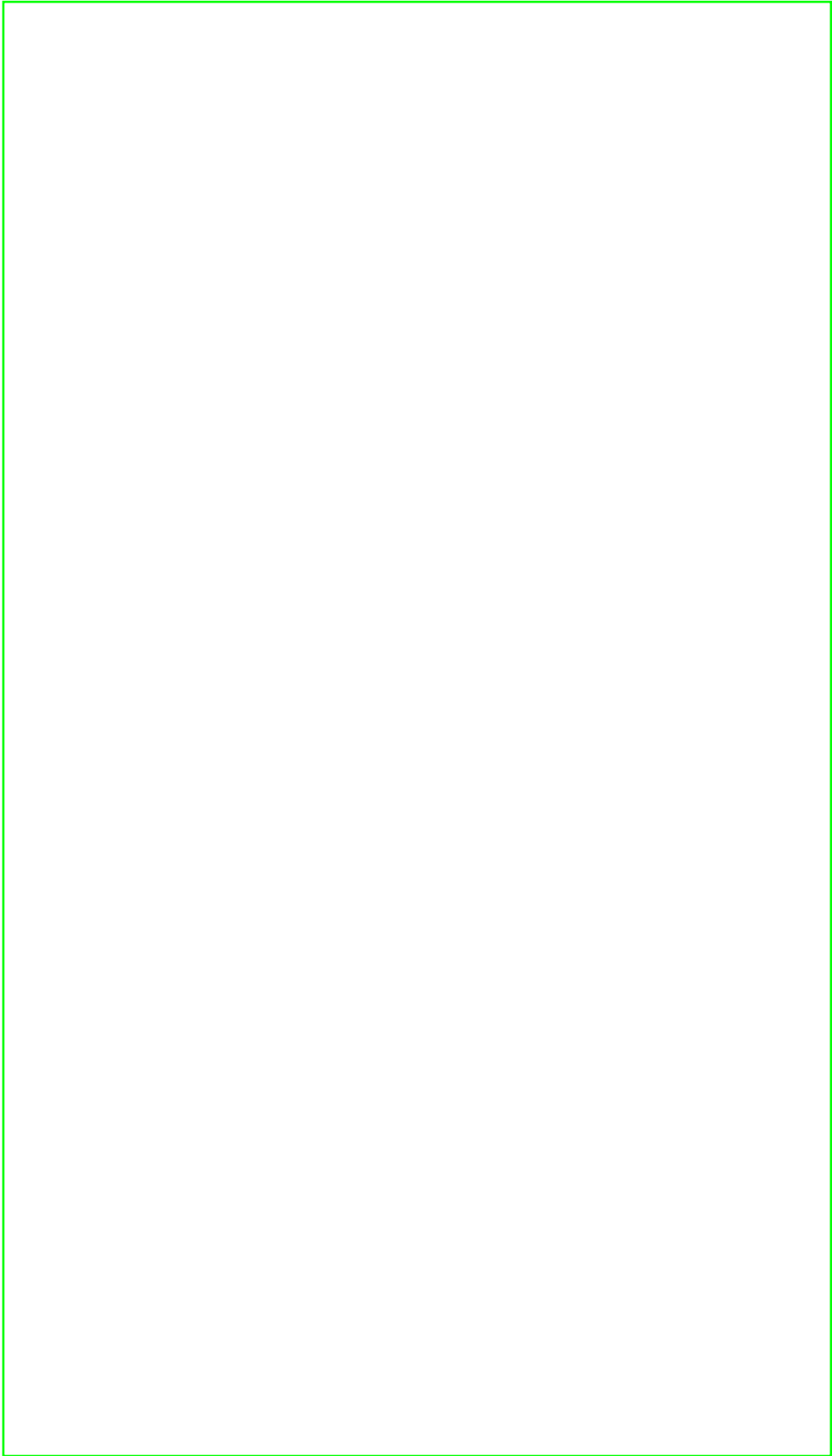
Source: Laws 1867, § 2, p. 90; Laws 1911, c. 51, § 1, p. 234; R.S.1913, § 2463; Laws 1919, c. 115, § 1, p. 280; C.S.1922, § 2404; Laws 1929, c. 105, § 1, p. 395; C.S.1929, § 33-143; Laws 1933, c. 62, § 1, p. 296; C.S.Supp.,1941, § 33-143; R.S.1943, § 33-138; Laws 1947, c. 125, § 1, p. 364; Laws 1957, c. 134, § 1, p. 450; Laws 1965, c. 187, § 1, p. 578; Laws 1969, c. 278, § 1, p. 1045; Laws 1974, LB 736, § 1; Laws 1981, LB 204, § 54; Laws 1984, LB 13, § 75; Laws 1991, LB 147, § 1; Laws 2003, LB 760, § 14; Laws 2012, LB865, § 3; Laws 2020, LB387, § 46.

Operative date January 1, 2021.

33-140.03 Unclaimed witness fees; duty of county board to make examination; failure of clerk to pay; suit authorized to recover.

The county board shall examine the books and records of the clerk of the county and district courts of the county. If the board finds that a clerk has failed to report or pay over any of the fees required by section 33-140 to be paid over or reported, the board shall notify the clerk to pay over the fees at once. If the clerk fails to pay over such fees to the county treasurer, the county board shall commence suit in any court having jurisdiction against the clerk and the person who issued the clerk's bond. The action shall be commenced in the name of the county for the benefit of the common schools of the county.

Source: Laws 1877, § 3, p. 226; R.S.1913, § 6678; C.S.1922, § 6215; C.S.1929, § 77-2604; R.S.1943, § 77-2404; R.S.1943, (1986), § 77-2404; Laws 1989, LB 11, § 4; Laws 2018, LB193, § 73.



CHAPTER 34

FENCES, BOUNDARIES, AND LANDMARKS

Article.

1. Division Fences. 34-112.02.

ARTICLE 1

DIVISION FENCES

Section

- 34-112.02. Division fence; construction, maintenance, or repair; notice; court action authorized; hearing; mediation; costs.

34-112.02 Division fence; construction, maintenance, or repair; notice; court action authorized; hearing; mediation; costs.

(1) Whenever a landowner desires to construct a division fence or perform maintenance or repairs to an existing division fence, such landowner shall give written notice of such intention to any person who is liable for the construction, maintenance, or repair of the division fence. Such notice may be served upon any nonresident by delivering the written notice to the occupant of the land or the landowner's agent in charge of the land. The written notice shall request that the person liable for the construction, maintenance, or repair satisfy his or her obligation by performance or by other manner of contribution. After giving written notice, a landowner may commence construction of a division fence, or commence maintenance or repair upon an existing division fence, in which cases any cause of action under this section and sections 34-102, 34-112, and 34-112.01 shall be an action for contribution.

(2) If notice is given prior to commencing construction, maintenance, or repair of a division fence and the person so notified either fails to respond to such request or refuses such request, the landowner sending notice may commence an action in the county court of the county where the land is located. If the landowners cannot agree what proportion of a division fence each shall construct, maintain, or repair, whether by performance or by contribution, either landowner may commence an action, without further written notice, in the county court of the county where the land is located. An action shall be commenced by filing a fence dispute complaint on a form prescribed by the State Court Administrator and provided to the plaintiff by the clerk of the county court. The complaint shall be executed by the plaintiff in the presence of a judge, a clerk or deputy or assistant clerk of a county court, or a notary public or other person authorized by law to take acknowledgments and be accompanied by the fee provided in section 33-123. A party shall not commence an action under this subsection until thirty days after giving notice under subsection (1) of this section and shall commence the action within one year after giving such notice.

(3) Upon filing of a fence dispute complaint, the court shall set a time for hearing and shall cause notice to be served upon the defendant. Notice shall be served not less than five days before the time set for hearing. Notice shall

consist of a copy of the complaint and a summons directing the defendant to appear at the time set for hearing and informing the defendant that if he or she fails to appear, judgment will be entered against him or her. Notice shall be served in the manner provided for service of a summons in a civil action. If the notice is to be served by certified mail, the clerk shall provide the plaintiff with written instructions, prepared and provided by the State Court Administrator, regarding the proper procedure for service by certified mail. The cost of service shall be paid by the plaintiff, but such cost and filing fee shall be added to any judgment awarded to the plaintiff.

(4) In any proceeding under this section, subsequent to the initial filing, the parties shall receive from the clerk of the court information regarding availability of mediation through the farm mediation service of the Department of Agriculture or the state mediation centers as established through the Office of Dispute Resolution. Development of the informational materials and the implementation of this subsection shall be accomplished through the State Court Administrator. With the consent of both parties, a court may refer a case to mediation and may state a date for the case to return to court, but such date shall be no longer than ninety days from the date the order is signed unless the court grants an extension. If the parties consent to mediate and if a mediation agreement is reached, the court shall enter the agreement as the judgment in the action. The costs of mediation shall be shared by the parties according to the schedule of fees established by the mediation service and collected directly by the mediation service.

(5) If the case is not referred to mediation or if mediation is terminated or fails to reach an agreement between the parties, the action shall proceed as a civil action subject to the rules of civil procedure.

Source: Laws 2007, LB108, § 6; Laws 2018, LB766, § 1.

**CHAPTER 35
FIRE COMPANIES AND FIREFIGHTERS**

Article.

- 1. Volunteer Fire Companies. 35-102.
- 5. Rural and Suburban Fire Protection Districts. 35-506 to 35-540.
- 10. Death or Disability. 35-1001.
- 12. Mutual Finance Assistance Act. 35-1204 to 35-1207.

**ARTICLE 1
VOLUNTEER FIRE COMPANIES**

Section

35-102. Volunteer fire department; number of members; apparatus.

35-102 Volunteer fire department; number of members; apparatus.

No volunteer fire department shall have upon its rolls at one time more than twenty-five persons, for each engine and hose company in such fire department, and no hook and ladder company shall have upon its rolls at any one time more than twenty-five members. No organization shall be deemed to be a bona fide fire or hook and ladder company until it has procured for active service apparatus for the extinguishment or prevention of fires, in case of a hose company, to the value of seven hundred dollars, and of a hook and ladder company to the value of five hundred dollars.

Source: Laws 1867 (Ter.), § 2, p. 16; G.S.1873, c. 24, § 2, p. 390; R.S.1913, § 2497; Laws 1915, c. 44, § 1, p. 122; C.S.1922, § 2435; C.S.1929, § 35-102; R.S.1943, § 35-102; Laws 2018, LB193, § 74.

**ARTICLE 5
RURAL AND SUBURBAN FIRE PROTECTION DISTRICTS**

Section

- 35-506. District; vote on organization; officers; terms; compensation.
- 35-507. District; meeting; when held.
- 35-509. District; budget; tax to support; limitation; how levied; county treasurer; duties.
- 35-514. District; annexation of territory; procedure.
- 35-537. Annexation of territory by a city or village; effect on certain contracts.
- 35-538. Annexation; board of directors; accounting; effect.
- 35-539. Annexation; when effective; board of directors; duties.
- 35-540. Annexation; obligations and assessments; agreement to divide; approval; decree.

35-506 District; vote on organization; officers; terms; compensation.

(1) After formation of a district by merger or reorganization under section 35-517, at the time and place fixed by the county board for public hearing as provided in section 35-514, the registered voters who are residing within the boundaries of the district shall have the opportunity to decide by majority vote of those present whether the organization of the district shall be completed.

Permanent organization shall be effected by the election of a board of directors consisting of five residents of the district. Such directors shall at the first regular meeting after their election select from the board a president, a vice president, and a secretary-treasurer who shall serve as the officers of the board of directors for one year. The board shall reorganize itself annually. The elected member of the board of directors receiving the highest number of votes in the election shall preside over the first regular meeting until the officers of such board have been selected. The three members receiving the highest number of votes shall serve for a term of four years and the other two members for a term of two years; and this provision shall apply to directors elected at the organizational meeting of the district.

(2) The board shall reorganize itself annually. Election of directors of existing districts shall be held by the registered voters present at the regular annual meeting provided for in section 35-507 which is held in the calendar year during which the terms of directors are scheduled to expire. As the terms of these members expire, their successors shall be elected for four years and hold office until their successors have been elected. If the district contains more than one township, each township may be represented on the board of directors unless there are more than five townships within the district, and in such event there shall be only five directors on the board and no township shall have more than one member elected to such board of directors. In case of a vacancy on account of resignation, death, malfeasance, or nonfeasance of a member, the remaining members of the board shall fill the vacancy for the unexpired term. The person appointed to fill the vacancy shall be from the same area as the person whose office is vacated, if possible, otherwise from the district at large.

(3) The members of the board of directors of a rural or suburban fire protection district may receive up to fifty dollars for each meeting of the board, but not to exceed twelve meetings in any calendar year, and reimbursement for any actual expenses necessarily incurred as a direct result of their responsibilities and duties as members of the board engaged upon the business of the district. When it is necessary for any member of the board of directors to travel on business of the district and to attend meetings of the district, he or she shall be allowed mileage at the rate provided in section 81-1176 for each mile actually and necessarily traveled.

Source: Laws 1939, c. 38, § 4, p. 193; C.S.Supp.,1941, § 35-604; R.S. 1943, § 35-404; Laws 1949, c. 98, § 6, p. 264; Laws 1967, c. 208, § 1, p. 567; Laws 1969, c. 283, § 1, p. 1051; Laws 1969, c. 257, § 36, p. 950; Laws 1981, LB 204, § 56; Laws 1995, LB 756, § 1; Laws 1998, LB 1120, § 9; Laws 2019, LB63, § 1.

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.

Cross References

Nebraska Budget Act, see section 13-501.

35-509 District; budget; tax to support; limitation; how levied; county treasurer; duties.

(1) The board of directors shall have the power and duty to determine a general fire protection and rescue policy for the district and shall annually fix the amount of money for the proposed budget statement as may be deemed sufficient and necessary in carrying out such contemplated program for the ensuing fiscal year, including the amount of principal and interest upon the indebtedness of the district for the ensuing year.

(2)(a) For any rural or suburban fire protection district that has levy authority pursuant to subsection (10) of section 77-3442, after the adoption of the budget statement, the president and secretary of the district shall certify the amount of tax to be levied which the district requires for the adopted budget statement for the ensuing year to the proper county clerk or county clerks on or before September 20 of each year. The county board shall levy a tax not to exceed ten and one-half cents on each one hundred dollars upon the taxable value of all the taxable property in such district for the maintenance of the fire protection district for the fiscal year, plus such levy as is authorized to be made under subdivision (13)(a) of section 35-508, all such levies being subject to subsection (10) of section 77-3442. The tax shall be collected as other taxes are collected in the county, deposited with the county treasurer, and placed to the credit of the rural or suburban fire protection district so authorizing the same on or before the fifteenth day of each month or more frequently as provided in section 77-1759 or be remitted to the county treasurer of the county in which the greatest portion of the valuation of the district is located as is provided for by subsection (3) of this section.

(b) For any rural or suburban fire protection district that does not have levy authority pursuant to subsection (10) of section 77-3442, after the adoption of the budget statement, the president and secretary of the district shall request the amount of tax to be levied which the district requires for the adopted budget statement for the ensuing year to the proper county clerk or county clerks on or before August 1 of each year pursuant to subsection (3) of section 77-3443. The county board shall levy a tax not to exceed ten and one-half cents on each one hundred dollars upon the taxable value of all the taxable property in such district for the maintenance of the fire protection district for the fiscal year, plus such levy as is authorized to be made under subdivision (13)(b) of section 35-508, all such levies being subject to section 77-3443. The tax shall be collected as other taxes are collected in the county, deposited with the county treasurer, and placed to the credit of the rural or suburban fire protection district so authorizing the same on or before the fifteenth day of each month or more frequently as provided in section 77-1759 or be remitted to the county treasurer of the county in which the greatest portion of the valuation of the district is located as is provided for by subsection (3) of this section. For

purposes of section 77-3443, the county board of the county in which the greatest portion of the valuation of the district is located shall approve the levy.

(3) All such taxes collected or received for the district by the treasurer of any other county than the one in which the greatest portion of the valuation of the district is located shall be remitted to the treasurer of the county in which the greatest portion of the valuation of the district is located at least quarterly. All such taxes collected or received shall be placed to the credit of such district in the treasury of the county in which the greatest portion of the valuation of the district is located.

(4) In no case shall the amount of tax levy exceed the amount of funds to be received from taxation according to the adopted budget statement of the district.

Source: Laws 1939, c. 38, § 5, p. 193; C.S.Supp.,1941, § 35-605; R.S. 1943, § 35-405; Laws 1947, c. 128, § 1, p. 368; Laws 1949, c. 98, § 9, p. 266; Laws 1953, c. 121, § 1, p. 383; Laws 1953, c. 287, § 54, p. 962; Laws 1955, c. 127, § 1, p. 360; Laws 1955, c. 128, § 4, p. 365; Laws 1969, c. 145, § 34, p. 693; Laws 1972, LB 849, § 3; Laws 1975, LB 375, § 2; Laws 1979, LB 187, § 150; Laws 1990, LB 918, § 3; Laws 1992, LB 719A, § 131; Laws 1996, LB 1114, § 55; Laws 1998, LB 1120, § 12; Laws 2007, LB334, § 5; Laws 2015, LB325, § 4; Laws 2019, LB63, § 2.

35-514 District; annexation of territory; procedure.

(1) Any territory which is outside the limits of any incorporated city may be annexed to an adjacent district in the manner provided in this section, whether or not the territory is in an existing rural or suburban fire protection district.

(2) The proceedings for the annexation may be initiated by either (a) the presentation to the county clerk of a petition signed by sixty percent or more of the registered voters who are residing within the boundaries of the territory to be annexed stating the desires and purposes of such petitioners or (b) the presentation to the county clerk of certified copies of resolutions passed by the board of directors of the annexing district and any other district from which the property would be annexed supporting the proposed annexation. The petition or resolutions shall contain a description of the boundaries of the territory proposed to be annexed. The petition or resolutions shall be accompanied by a map or plat and a deposit for publication costs.

(3) The county clerk shall verify the petition as provided in section 32-631 and determine and certify whether or not such petition or resolution complies with the requirements of subsection (2) of this section and that the persons signing the petition appear to reside at the addresses indicated by such petition. Thereafter, the county clerk shall forward any petition, map or plat, and certificate to the board of directors of the districts concerned.

(4) Within thirty days after receiving the petition, map or plat, and certificate of the county clerk, in accordance with subsection (3) of this section, from the county clerk, the board of directors of all affected districts shall transmit the same to the proper county board, accompanied by a report in writing approving or disapproving the proposal contained in the petition, or approving such proposal in part and disapproving it in part. If the annexation is proposed by resolutions of the affected districts, the resolutions shall be transmitted to the proper county board.

(5) The county board shall promptly designate a time and place for a hearing upon the annexation. Notice of such hearing shall be given by publication two weeks in a newspaper of general circulation in the county, the last publication appearing at least seven days prior to the hearing. The notice shall be addressed to “all registered voters residing in the following boundaries” and shall include a description of the proposed boundaries as set forth in the petition or resolutions. At such hearing, any person shall have the opportunity to be heard respecting the proposed annexation.

(6) The county board shall, within forty-five days after the hearing referred to in subsection (5) of this section, determine whether such territory should be annexed and shall fix the boundaries of the territory to be annexed. No annexation shall be approved which would leave any district with less than the minimum valuation of two million eight hundred sixty thousand dollars. The determination of the county board shall be set forth in a written order which shall describe the boundaries determined upon and shall be filed in the office of the county clerk.

(7) Any area annexed from a rural or suburban fire protection district, except areas duly incorporated within the boundaries of a municipality, shall be subject to assessment and be otherwise chargeable for the payment and discharge of all the obligations of the rural or suburban fire protection district outstanding at the time of the filing of the petition or resolution for the annexation of the area as fully as though the area had not been annexed. All procedures which could be used to compel the annexed area, except for areas duly incorporated within the boundaries of a municipality, to pay its portion of the outstanding obligations had the annexation not occurred may be used to compel such payment. Areas duly incorporated within the boundaries of a municipality shall be automatically annexed from the boundaries of the district notwithstanding the provisions of section 35-540 and shall not be subject to further tax levy or other charges by the district, except that before the annexation is complete, the municipality shall assume and pay that portion of all outstanding obligations of the district which would otherwise constitute an obligation of the area annexed or incorporated. An area annexed from a rural or suburban fire protection district shall not be subject to assessment or otherwise chargeable for any obligation of any nature or kind incurred by the district after the annexation of the area from the district.

Source: Laws 1949, c. 98, § 14, p. 268; Laws 1953, c. 120, § 2, p. 379; Laws 1955, c. 128, § 9, p. 368; Laws 1957, c. 136, § 1, p. 454; Laws 1981, LB 310, § 1; Laws 1998, LB 1120, § 15; Laws 2018, LB130, § 9.

35-537 Annexation of territory by a city or village; effect on certain contracts.

Whenever any city or village annexes all the territory within the boundaries of any rural or suburban fire protection district authorized under Chapter 35, article 5, the district shall merge with the city or village and the city or village shall succeed to all the property and property rights of every kind, contracts, obligations, and choses in action of every kind, held by or belonging to the district, and the city or village shall be liable for and recognize, assume, and carry out all valid contracts and obligations of the district. All taxes, assessments, claims, and demands of every kind due or owing to the district shall be paid to and collected by the city or village. Nothing in this section shall

authorize the annexing city or village to revoke any resolution, order, or finding made by the district in regard to special benefits or increase any assessments made by the district, but such city or village shall be bound by all such findings or orders and assessments to the same extent as the district would be bound.

Source: Laws 2018, LB130, § 5.

35-538 Annexation; board of directors; accounting; effect.

The board of directors of a rural or suburban fire protection district shall, within thirty days after the effective date of the merger, submit to the city or village a written accounting of all assets and liabilities, contingent or fixed, of the district. Unless the city or village within six months thereafter brings an action against the board of directors of the district for an accounting or for damages for breach of duty, the board of directors shall be discharged of all further duties and liabilities and their bonds exonerated. If the city or village brings such an action and does not recover judgment in its favor, the taxable costs may include reasonable expenses incurred by the board of directors in connection with such suit and a reasonable attorney's fee for the board's attorney. The city or village shall represent the district and all parties who might be interested in such an action. The city or village and such board shall be the only necessary parties to such action.

Source: Laws 2018, LB130, § 6.

35-539 Annexation; when effective; board of directors; duties.

The merger shall be effective thirty days after the effective date of the ordinance annexing the territory within the rural or suburban fire protection district. If the validity of the ordinance annexing the territory is challenged by a proceeding in a court of competent jurisdiction, the effective date of the merger shall be thirty days after the final determination of the validity of the ordinance. The board of directors of the district of the rural or suburban fire protection district shall continue in possession and conduct the affairs of the district until the effective date of the merger.

Source: Laws 2018, LB130, § 7.

35-540 Annexation; obligations and assessments; agreement to divide; approval; decree.

If only a part of the territory within any rural or suburban fire protection district is annexed by a city or village, the fire protection district acting through its board of directors and the city or village acting through its governing body may agree between themselves as to the division of the assets, liabilities, maintenance, contracts, or other obligations of the district for a change in the boundaries of the district so as to exclude the portion annexed by the city or village or may agree upon a merger of the district with the city or village. The division of assets, liabilities, maintenance, contracts, or other obligations of the district shall be equitable, shall be proportionate to the valuation of the portion of the district annexed and to the valuation of the portion of the district remaining following annexation, and shall, to the greatest extent feasible, reflect the actual impact of the annexation on the ability of the district to perform its duties and responsibilities within its new boundaries following annexation. In the event a merger is agreed upon, the city or village shall have all the rights, privileges, duties, and obligations as provided in sections 35-537

to 35-539 when the city or village annexes the entire territory within the district, and the board of directors shall be relieved of all further duties and liabilities and their bonds exonerated as provided in section 35-538. No agreement between the district and the city or village shall be effective until submitted to and approved by the district court of the county in which the major portion of the district is located. No agreement shall be approved which may prejudice the rights of any bondholder or creditor of the district or employee under contract to the district. The court may authorize or direct amendments to the agreement before approving the same. If the district and city or village do not agree upon the proper adjustment of all matters growing out of the annexation of a part of the territory located within the district, the district, the annexing city or village, any bondholder or creditor of the district, or any employee under contract to the district may apply to the district court of the county where the major portion of the district is located for an adjustment of all matters growing out of or in any way connected with the annexation of such territory, and after a hearing thereon the court may enter an order or decree fixing the rights, duties, and obligations of the parties. In every case such decree or order shall require a change of the district boundaries so as to exclude from the district that portion of the territory of the district which has been annexed. Such change of boundaries shall become effective on the date of entry of such decree. Only the district and the city or village shall be necessary parties to such an action. Any bondholder or creditor of the district or any employee under contract to the district whose interests may be adversely affected by the annexation may intervene in the action pursuant to section 25-328. The decree when entered shall be binding on the parties the same as though the parties had voluntarily agreed thereto.

Source: Laws 2018, LB130, § 8.

ARTICLE 10 DEATH OR DISABILITY

Section

35-1001. Death or disability as a result of cancer; death or disability as a result of certain diseases; prima facie evidence.

35-1001 Death or disability as a result of cancer; death or disability as a result of certain diseases; prima facie evidence.

(1) For a firefighter or firefighter-paramedic who is a member of a paid fire department of a municipality or a rural or suburban fire protection district in this state, including a municipality having a home rule charter or a municipal authority created pursuant to a home rule charter that has its own paid fire department, and who suffers death or disability as a result of cancer, including, but not limited to, breast cancer, ovarian cancer, and cancer affecting the skin or the central nervous, lymphatic, digestive, hematological, urinary, skeletal, oral, or prostate systems, evidence which demonstrates that (a) such firefighter or firefighter-paramedic successfully passed a physical examination upon entry into such service or subsequent to such entry, which examination failed to reveal any evidence of cancer, (b) such firefighter or firefighter-paramedic was exposed to a known carcinogen, as defined on July 19, 1996, by the International Agency for Research on Cancer, while in the service of the fire department, and (c) such carcinogen is reported by the agency to be a suspected or known cause of the type of cancer the firefighter or firefighter-paramedic has, shall be

prima facie evidence that such death or disability resulted from injuries, accident, or other cause while in the line of duty for the purposes of sections 16-1020 to 16-1042, a firefighter's pension plan established pursuant to a home rule charter, and a firefighter's pension or disability plan established by a rural or suburban fire protection district.

(2) For a firefighter or firefighter-paramedic who is a member of a paid fire department of a municipality or a rural or suburban fire protection district in this state, including a municipality having a home rule charter or a municipal authority created pursuant to a home rule charter that has its own paid fire department, and who suffers death or disability as a result of a blood-borne infectious disease, tuberculosis, meningococcal meningitis, or methicillin-resistant *Staphylococcus aureus*, evidence which demonstrates that (a) such firefighter or firefighter-paramedic successfully passed a physical examination upon entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such blood-borne infectious disease, tuberculosis, meningococcal meningitis, or methicillin-resistant *Staphylococcus aureus*, and (b) such firefighter or firefighter-paramedic has engaged in the service of the fire department within ten years before the onset of the disease, shall be prima facie evidence that such death or disability resulted from injuries, accident, or other cause while in the line of duty for the purposes of sections 16-1020 to 16-1042, a firefighter's pension plan established pursuant to a home rule charter, and a firefighter's pension or disability plan established by a rural or suburban fire protection district.

(3) The prima facie evidence presumed under this section shall extend to death or disability as a result of cancer as described in this section, a blood-borne infectious disease, tuberculosis, meningococcal meningitis, or methicillin-resistant *Staphylococcus aureus* after the firefighter or firefighter-paramedic separates from his or her service to the fire department if the death or disability occurs within three months after such separation.

(4) For purposes of this section, blood-borne infectious disease means human immunodeficiency virus, acquired immunodeficiency syndrome, and all strains of hepatitis.

Source: Laws 1996, LB 1076, § 45; Laws 2010, LB373, § 2; Laws 2020, LB643, § 1.

Effective date November 14, 2020.

ARTICLE 12

MUTUAL FINANCE ASSISTANCE ACT

Section

35-1204. Mutual finance organization; creation by agreement; tax levy.

35-1206. Distributions from fund; amount; disqualification; when.

35-1207. Application for distribution; financial information required; State Treasurer; duties.

35-1204 Mutual finance organization; creation by agreement; tax levy.

(1) A mutual finance organization may be created by agreement among its members pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The agreement shall:

(a) Have a duration of three years;

(b) Require that each member of the mutual finance organization levy the same agreed-upon property tax rate within their boundaries for one out of the

three tax years covered by the agreement. The members need not levy such agreed-upon property tax rate during the same year;

(c) Require that all members of the mutual finance organization levy no more than such agreed-upon property tax rate for the remaining tax years covered by the agreement; and

(d) Contain a statement of the agreed-upon maximum property tax rate.

(2) The property tax rates described in subsection (1) of this section shall be levied for the purpose of jointly funding the operations of all members of the mutual finance organization. All such property tax rates shall exclude levies for bonded indebtedness and lease-purchase contracts in existence on July 1, 1998.

(3) The changes made to this section by Laws 2020, LB1130, do not affect eligibility for funding pursuant to the Mutual Finance Assistance Act that is to be paid on or before May 1, 2021.

Source: Laws 1998, LB 1120, § 4; Laws 1999, LB 87, § 70; Laws 2019, LB63, § 3; Laws 2020, LB1130, § 1.
Effective date November 14, 2020.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

35-1206 Distributions from fund; amount; disqualification; when.

(1) Rural and suburban fire protection districts or mutual finance organizations which qualify for assistance under section 35-1205 shall receive ten dollars times the assumed population of the fire protection district or mutual finance organization as calculated in subsection (3) of such section plus the population of any city of the first class that is part of the district or mutual finance organization, not to exceed three hundred thousand dollars for any one district or mutual finance organization. If the district or mutual finance organization is located in more than one county and meets the threshold for qualification in subsection (1) or (2) of section 35-1205 in one of such counties, the district or mutual finance organization shall receive assistance under this section for all of its assumed population, including that which is assumed population in counties for which the threshold is not reached by the district or mutual finance organization.

(2) If a mutual finance organization qualifies for assistance under this section and one or more rural or suburban fire protection districts or cities or villages fail to levy a tax rate that complies with subsection (1) of section 35-1204, as required under the mutual finance organization agreement, the mutual finance organization shall be disqualified for assistance in the following year and each subsequent year until the year following any year for which all districts and cities and villages in the mutual finance organization levy a tax rate that complies with subsection (1) of section 35-1204, as required by a mutual finance organization agreement.

Source: Laws 1998, LB 1120, § 6; Laws 1999, LB 141, § 8; Laws 2019, LB63, § 4.

35-1207 Application for distribution; financial information required; State Treasurer; duties.

(1) Any rural or suburban fire protection district or mutual finance organization seeking funds pursuant to the Mutual Finance Assistance Act shall submit an application and any forms required by the State Treasurer. Such application and forms shall be submitted to the State Treasurer by September 20. The State Treasurer shall develop the application which requires calculations showing assumed population eligibility under section 35-1205 and the distribution amount under section 35-1206. If the applicant is a mutual finance organization, it shall attach to its first application a copy of the agreement pursuant to section 35-1204 and attach to any subsequent application a copy of an amended agreement or an affidavit stating that the previously submitted agreement is still accurate and effective. Any mutual finance organization making application pursuant to this section shall include with the application additional financial information regarding the manner in which any funds received by the mutual finance organization based upon the prior year's application pursuant to the act have been expended or distributed by that mutual finance organization. The State Treasurer shall provide electronic copies of such reports on mutual finance organization expenditures and distributions to the Clerk of the Legislature by December 1 of each year in which any reports are filed.

(2) The State Treasurer shall review all applications for eligibility for funds under the act and approve any application which is accurate and demonstrates that the applicant is eligible for funds. On or before November 4, the State Treasurer shall notify the applicant of approval or denial of the application and certify the amount of funds for which an approved applicant is eligible. The decision of the State Treasurer may be appealed as provided in the Administrative Procedure Act.

(3)(a) Except as provided in subsection (5) of this section, funds shall be disbursed by the State Treasurer in two payments which are as nearly equal as possible. Such payments shall be made as follows:

(i) For applications received by the State Treasurer by July 1, 2020, such payments shall be made on or before November 1, 2020, and May 1, 2021;

(ii) For applications received by the State Treasurer after July 1, 2020, and by September 20, 2021, such payments shall be made on or before January 20, 2022, and May 20, 2022; and

(iii) For applications received by the State Treasurer by September 20 of any year thereafter, such payments shall be made on or before the next following January 20 and May 20.

(b) If the Mutual Finance Assistance Fund is insufficient to make all payments to all applicants in the amounts provided in section 35-1206, the State Treasurer shall prorate payments to approved applicants.

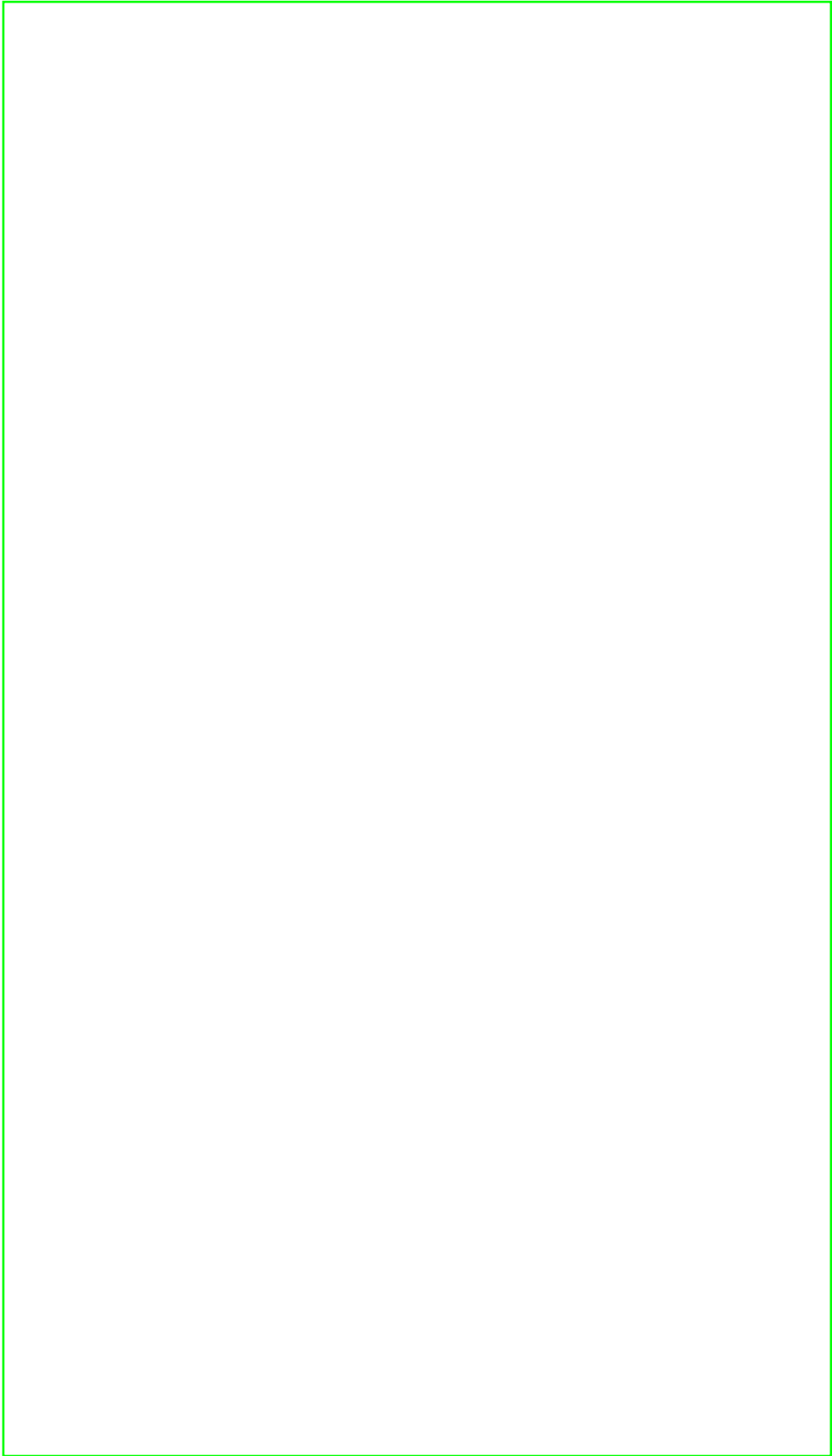
(4) Funds remaining in the Mutual Finance Assistance Fund on June 20 shall be transferred to the General Fund before July 1.

(5) No funds shall be disbursed to an eligible mutual finance organization until it has provided to the State Treasurer the financial information regarding the manner in which it has expended or distributed prior disbursements made pursuant to the Mutual Finance Assistance Act as provided in subsection (1) of this section.

Source: Laws 1998, LB 1120, § 7; Laws 2006, LB 1175, § 6; Laws 2012, LB782, § 34; Laws 2019, LB63, § 5; Laws 2020, LB1130, § 2.
Effective date November 14, 2020.

Cross References

Administrative Procedure Act, see section 84-920.



CHAPTER 36

FRAUD AND VOIDABLE TRANSACTIONS

Article.

7. Uniform Fraudulent Transfer Act. Repealed.
8. Uniform Voidable Transactions Act. 36-801 to 36-815.

ARTICLE 7

UNIFORM FRAUDULENT TRANSFER ACT

Section

- 36-701. Repealed. Laws 2019, LB70, § 20.
- 36-702. Repealed. Laws 2019, LB70, § 20.
- 36-703. Repealed. Laws 2019, LB70, § 20.
- 36-704. Repealed. Laws 2019, LB70, § 20.
- 36-705. Repealed. Laws 2019, LB70, § 20.
- 36-706. Repealed. Laws 2019, LB70, § 20.
- 36-707. Repealed. Laws 2019, LB70, § 20.
- 36-708. Repealed. Laws 2019, LB70, § 20.
- 36-709. Repealed. Laws 2019, LB70, § 20.
- 36-710. Repealed. Laws 2019, LB70, § 20.
- 36-711. Repealed. Laws 2019, LB70, § 20.
- 36-712. Repealed. Laws 2019, LB70, § 20.

36-701 Repealed. Laws 2019, LB70, § 20.

36-702 Repealed. Laws 2019, LB70, § 20.

36-703 Repealed. Laws 2019, LB70, § 20.

36-704 Repealed. Laws 2019, LB70, § 20.

36-705 Repealed. Laws 2019, LB70, § 20.

36-706 Repealed. Laws 2019, LB70, § 20.

36-707 Repealed. Laws 2019, LB70, § 20.

36-708 Repealed. Laws 2019, LB70, § 20.

36-709 Repealed. Laws 2019, LB70, § 20.

36-710 Repealed. Laws 2019, LB70, § 20.

36-711 Repealed. Laws 2019, LB70, § 20.

36-712 Repealed. Laws 2019, LB70, § 20.

ARTICLE 8

UNIFORM VOIDABLE TRANSACTIONS ACT

Section

- 36-801. Short title.
- 36-802. Definitions.

§ 36-801

FRAUD AND VOIDABLE TRANSACTIONS

Section

- 36-803. Insolvency.
- 36-804. Value.
- 36-805. Transfer or obligation voidable as to present or future creditor.
- 36-806. Transfer or obligation voidable as to present creditor.
- 36-807. When transfer is made or obligation is incurred.
- 36-808. Remedies of creditor.
- 36-809. Defenses, liability, and protection of transferee or obligee.
- 36-810. Extinguishment of claim for relief.
- 36-811. Governing law.
- 36-812. Application to series organization.
- 36-813. Supplementary provisions.
- 36-814. Uniformity of application and construction.
- 36-815. Relation to Electronic Signatures in Global and National Commerce Act.

36-801 Short title.

Sections 36-801 to 36-815 shall be known and may be cited as the Uniform Voidable Transactions Act.

Source: Laws 2019, LB70, § 1.

36-802 Definitions.

As used in the Uniform Voidable Transactions Act:

(1) Affiliate means:

(i) a person that directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

(A) as a fiduciary or agent without sole discretionary power to vote the securities; or

(B) solely to secure a debt, if the person has not in fact exercised the power to vote;

(ii) a corporation twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person that directly or indirectly owns, controls, or holds, with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

(A) as a fiduciary or agent without sole discretionary power to vote the securities; or

(B) solely to secure a debt, if the person has not in fact exercised the power to vote;

(iii) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(iv) a person that operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) Asset means property of a debtor, but the term does not include:

(i) property to the extent it is encumbered by a valid lien;

(ii) property to the extent it is generally exempt under nonbankruptcy law; or

(iii) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) Claim, except as used in claim for relief, means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) Creditor means a person that has a claim.

(5) Debt means liability on a claim.

(6) Debtor means a person that is liable on a claim.

(7) Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(8) Insider includes:

(i) if the debtor is an individual:

(A) a relative of the debtor or of a general partner of the debtor;

(B) a partnership in which the debtor is a general partner;

(C) a general partner in a partnership described in subdivision (8)(i)(B) of this section; or

(D) a corporation of which the debtor is a director, officer, or person in control;

(ii) if the debtor is a corporation:

(A) a director of the debtor;

(B) an officer of the debtor;

(C) a person in control of the debtor;

(D) a partnership in which the debtor is a general partner;

(E) a general partner in a partnership described in subdivision (8)(ii)(D) of this section; or

(F) a relative of a general partner, director, officer, or person in control of the debtor;

(iii) if the debtor is a partnership:

(A) a general partner in the debtor;

(B) a relative of a general partner in, a general partner of, or a person in control of the debtor;

(C) another partnership in which the debtor is a general partner;

(D) a general partner in a partnership described in subdivision (8)(iii)(C) of this section; or

(E) a person in control of the debtor;

(iv) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(v) a managing agent of the debtor.

(9) Lien means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(10) Organization means a person other than an individual.

(11) Person means an individual, estate, partnership, association, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal or commercial entity.

(12) Property means anything that may be the subject of ownership.

(13) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) Relative means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(15) Sign means, with present intent to authenticate or adopt a record:

(i) to execute or adopt a tangible symbol; or

(ii) to attach to or logically associate with the record an electronic symbol, sound, or process.

(16) Transfer means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.

(17) Valid lien means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

Source: Laws 2019, LB70, § 2.

36-803 Insolvency.

(a) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets.

(b) A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

(c) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under the Uniform Voidable Transactions Act.

(d) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

Source: Laws 2019, LB70, § 3.

36-804 Value.

(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of subdivision (a)(2) of section 36-805 and section 36-806, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

Source: Laws 2019, LB70, § 4.

36-805 Transfer or obligation voidable as to present or future creditor.

(a) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) In determining actual intent under subdivision (a)(1) of this section, consideration may be given, among other factors, to whether:

(1) the transfer or obligation was to an insider;

(2) the debtor retained possession or control of the property transferred after the transfer;

(3) the transfer or obligation was disclosed or concealed;

(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) the transfer was of substantially all the debtor's assets;

(6) the debtor absconded;

(7) the debtor removed or concealed assets;

(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

(c) A creditor making a claim for relief under subsection (a) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Source: Laws 2019, LB70, § 5.

36-806 Transfer or obligation voidable as to present creditor.

(a) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(c) Subject to subsection (b) of section 36-803, a creditor making a claim for relief under subsection (a) or (b) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Source: Laws 2019, LB70, § 6.

36-807 When transfer is made or obligation is incurred.

For the purposes of the Uniform Voidable Transactions Act:

(1) a transfer is made:

(i) with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against which applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(ii) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under the Uniform Voidable Transactions Act that is superior to the interest of the transferee;

(2) if applicable law permits the transfer to be perfected as provided in subdivision (1) of this section and the transfer is not so perfected before the commencement of an action for relief under the act, the transfer is deemed made immediately before the commencement of the action;

(3) if applicable law does not permit the transfer to be perfected as provided in subdivision (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee;

(4) a transfer is not made until the debtor has acquired rights in the asset transferred; and

(5) an obligation is incurred:

(i) if oral, when it becomes effective between the parties; or

(ii) if evidenced by a record, when the record signed by the obligor is delivered to or for the benefit of the obligee.

Source: Laws 2019, LB70, § 7.

36-808 Remedies of creditor.

(a) In an action for relief against a transfer or obligation under the Uniform Voidable Transactions Act, a creditor, subject to the limitations in section 36-809, may obtain:

(1) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) an attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law; and

(3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

Source: Laws 2019, LB70, § 8.

36-809 Defenses, liability, and protection of transferee or obligee.

(a) A transfer or obligation is not voidable under subdivision (a)(1) of section 36-805 against a person that took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) To the extent a transfer is avoidable in an action by a creditor under subdivision (a)(1) of section 36-808, the following rules apply:

(1) Except as otherwise provided in this section, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(i) the first transferee of the asset or the person for whose benefit the transfer was made; or

(ii) an immediate or mediate transferee of the first transferee, other than:

(A) a good-faith transferee that took for value; or

(B) an immediate or mediate good-faith transferee of a person described in subdivision (b)(1)(ii)(A) of this section.

(2) Recovery pursuant to subdivision (a)(1) or subsection (b) of section 36-808 of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in subdivision (b)(1)(i) or (ii) of this section.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under the Uniform Voidable Transactions Act, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) a lien on or a right to retain an interest in the asset transferred;

(2) enforcement of an obligation incurred; or

(3) a reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under subdivision (a)(2) of section 36-805 or section 36-806 if the transfer results from:

(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) enforcement of a security interest in compliance with article 9, Uniform Commercial Code, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(f) A transfer is not voidable under subsection (b) of section 36-806:

(1) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, except to the extent the new value was secured by a valid lien;

(2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(g) The following rules determine the burden of proving matters referred to in this section:

(1) A party that seeks to invoke subsection (a), (d), (e), or (f) of this section has the burden of proving the applicability of that subsection.

(2) Except as otherwise provided in subdivisions (g)(3) and (4) of this section, the creditor has the burden of proving each applicable element of subsection (b) or (c) of this section.

(3) The transferee has the burden of proving the applicability to the transferee of subdivision (b)(1)(ii)(A) or (B) of this section.

(4) A party that seeks adjustment under subsection (c) of this section has the burden of proving the adjustment.

(h) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.

Source: Laws 2019, LB70, § 9.

36-810 Extinguishment of claim for relief.

A claim for relief with respect to a transfer or obligation under the Uniform Voidable Transactions Act is extinguished unless action is brought:

(1) under subdivision (a)(1) of section 36-805, not later than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) under subdivision (a)(2) of section 36-805 or subsection (a) of section 36-806, not later than four years after the transfer was made or the obligation was incurred; or

(3) under subsection (b) of section 36-806, not later than one year after the transfer was made.

Source: Laws 2019, LB70, § 10.

36-811 Governing law.

(a) In this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(b) A claim for relief in the nature of a claim for relief under the Uniform Voidable Transactions Act is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

Source: Laws 2019, LB70, § 11.

36-812 Application to series organization.

(a) In this section:

(1) Protected series means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in subdivision (2) of this subsection.

(2) Series organization means an organization that, pursuant to the law under which it is organized, has the following characteristics:

(i) The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series;

(ii) Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization; and

(iii) Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

(b) A series organization and each protected series of the organization is a separate person for purposes of the Uniform Voidable Transactions Act, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization.

Source: Laws 2019, LB70, § 12.

36-813 Supplementary provisions.

Unless displaced by the provisions of the Uniform Voidable Transactions Act, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

Source: Laws 2019, LB70, § 13.

36-814 Uniformity of application and construction.

The Uniform Voidable Transactions Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

Source: Laws 2019, LB70, § 14.

36-815 Relation to Electronic Signatures in Global and National Commerce Act.

The Uniform Voidable Transactions Act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., as the act existed on September 1, 2019, but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Source: Laws 2019, LB70, § 15.

CHAPTER 37

GAME AND PARKS

Article.

1. Game and Parks Commission. 37-105, 37-106.
2. Game Law General Provisions. 37-201 to 37-247.01.
3. Commission Powers and Duties.
 - (a) General Provisions. 37-317.
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14. Nebraska Invasive Species Council. 37-1402.
16. Interstate Wildlife Violator Compact. 37-1601.
17. State Park System Construction Alternatives Act. 37-1701 to 37-1732.

ARTICLE 1

GAME AND PARKS COMMISSION

Section

- 37-105. Game and Parks Commission; expenses; per diem.
 37-106. Game and Parks Commission; secretary; qualifications; terms; compensation; expenses; duties; removal.

37-105 Game and Parks Commission; expenses; per diem.

The members of the Game and Parks Commission, other than the secretary, shall be reimbursed for expenses incurred in the discharge of their official duties as provided in sections 81-1174 to 81-1177 and shall be allowed a per diem of thirty-five dollars for days actually away from home on business of the commission, not exceeding forty-five days in any one year.

Source: Laws 1929, c. 113, § 4, p. 444; C.S.1929, § 81-6504; Laws 1933, c. 96, § 17, p. 396; Laws 1941, c. 180, § 7, p. 704; C.S.Supp.,1941, § 81-6504; R.S.1943, § 81-804; Laws 1947, c. 315, § 3, p. 954; Laws 1967, c. 584, § 1, p. 1973; Laws 1977, LB 482, § 1; Laws 1981, LB 204, § 172; Laws 1988, LB 864, § 13; R.S.1943, (1996), § 81-804; Laws 1998, LB 922, § 5; Laws 2020, LB381, § 26.

Operative date January 1, 2021.

37-106 Game and Parks Commission; secretary; qualifications; terms; compensation; expenses; duties; removal.

The Game and Parks Commission shall appoint a secretary, who will act as its director and chief conservation officer and be in charge of its activities. He or she shall be a person with knowledge of and experience in the requirements

of the protection, propagation, conservation, and restoration of the wildlife resources of the state. The secretary shall serve for a term of six years. The secretary shall not hold any other public office and shall devote his or her entire time to the service of the state in the discharge of his or her official duties. The secretary shall receive such compensation as the commission may determine and shall be reimbursed for expenses incurred by him or her in the discharge of his or her official duties as provided in sections 81-1174 to 81-1177. Before entering upon the duties of his or her office, the secretary shall take and subscribe to the constitutional oath of office, and shall, in addition thereto, swear or affirm that he or she holds no other public office, nor any position under any political committee or party. Such oath or affirmation shall be filed in the office of the Secretary of State. Under the direction of the commission, the secretary shall have general supervision and control of all activities and functions of the commission, shall enforce all the provisions of the law of the state relating to wild animals, birds, fish, parks, and recreational areas, and shall exercise all necessary powers incident thereto not specifically conferred on the commission. The secretary may be removed by the commission for inefficiency, neglect of duty, or misconduct in office, but only by a majority vote of the commissioners after delivering to the secretary a copy of the charges and affording him or her an opportunity of being publicly heard in person or by counsel in his or her own defense. If the secretary is removed, the commission shall place in its minutes a complete statement of all charges made against the secretary and its findings thereon, together with a complete record of the proceedings and the recorded vote thereon.

Source: Laws 1929, c. 113, § 10, p. 446; C.S.1929, § 81-6510; Laws 1935, c. 174, § 7, p. 642; C.S.Supp.,1941, § 81-6510; R.S.1943, § 81-807; Laws 1967, c. 36, § 7, p. 163; Laws 1967, c. 585, § 10, p. 1979; Laws 1981, LB 204, § 173; R.S.1943, (1996), § 81-807; Laws 1998, LB 922, § 6; Laws 2020, LB381, § 27.
Operative date January 1, 2021.

Cross References

For provisions relating to oath of office and bond approval generally, see Article XV, section 1, Constitution of Nebraska, and Chapter 11.

ARTICLE 2

GAME LAW GENERAL PROVISIONS

Section

- 37-201. Law, how cited.
37-202. Definitions, where found.
37-208.01. Bonus point, defined.
37-237.02. Preference point, defined.
37-247.01. Wildlife abatement, defined.

37-201 Law, how cited.

Sections 37-201 to 37-811 and 37-1501 to 37-1510 and the State Park System Construction Alternatives Act shall be known and may be cited as the Game Law.

Source: Laws 1929, c. 112, I, § 2, p. 408; C.S.1929, § 37-102; R.S.1943, § 37-102; Laws 1989, LB 34, § 2; Laws 1989, LB 251, § 1; Laws 1991, LB 403, § 2; Laws 1993, LB 830, § 7; Laws 1994, LB 1088,

§ 2; Laws 1994, LB 1165, § 6; Laws 1995, LB 274, § 1; Laws 1996, LB 923, § 2; Laws 1997, LB 19, § 2; R.S.Supp.,1997, § 37-102; Laws 1998, LB 922, § 11; Laws 1999, LB 176, § 2; Laws 2000, LB 788, § 2; Laws 2002, LB 1003, § 14; Laws 2003, LB 305, § 1; Laws 2004, LB 826, § 1; Laws 2005, LB 121, § 2; Laws 2005, LB 162, § 1; Laws 2007, LB504, § 1; Laws 2009, LB105, § 2; Laws 2010, LB743, § 3; Laws 2010, LB836, § 1; Laws 2012, LB391, § 1; Laws 2012, LB928, § 1; Laws 2014, LB699, § 1; Laws 2014, LB814, § 1; Laws 2015, LB142, § 1; Laws 2016, LB474, § 1; Laws 2018, LB775, § 1; Laws 2019, LB374, § 1; Laws 2020, LB287, § 1.

Effective date November 14, 2020.

Cross References

State Park System Construction Alternatives Act, see section 37-1701.

37-202 Definitions, where found.

For purposes of the Game Law, unless the context otherwise requires, the definitions found in sections 37-203 to 37-247.01 are used.

Source: Laws 1929, c. 112, I, § 1, p. 407; C.S.1929, § 37-101; Laws 1931, c. 75, § 1, p. 199; Laws 1937, c. 89, § 1, p. 290; Laws 1941, c. 72, § 1, p. 300; C.S.Supp.,1941, § 37-101; Laws 1943, c. 94, § 1, p. 321; R.S.1943, § 37-101; Laws 1949, c. 100, § 1, p. 275; Laws 1953, c. 123, § 1, p. 386; Laws 1957, c. 139, § 1, p. 464; Laws 1959, c. 148, § 2, p. 563; Laws 1963, c. 200, § 1, p. 647; Laws 1965, c. 194, § 1, p. 592; Laws 1967, c. 216, § 1, p. 578; Laws 1971, LB 733, § 8; Laws 1973, LB 331, § 1; Laws 1975, LB 195, § 1; Laws 1975, LB 142, § 1; Laws 1976, LB 861, § 1; Laws 1981, LB 72, § 1; Laws 1985, LB 557, § 1; Laws 1987, LB 154, § 1; Laws 1989, LB 34, § 1; Laws 1993, LB 121, § 201; Laws 1993, LB 830, § 6; Laws 1994, LB 884, § 57; Laws 1994, LB 1088, § 1; Laws 1994, LB 1165, § 5; Laws 1995, LB 259, § 1; Laws 1997, LB 173, § 1; R.S.Supp.,1997, § 37-101; Laws 1998, LB 922, § 12; Laws 1999, LB 176, § 3; Laws 2002, LB 1003, § 15; Laws 2012, LB391, § 2; Laws 2019, LB374, § 2; Laws 2020, LB287, § 2.

Effective date November 14, 2020.

37-208.01 Bonus point, defined.

Bonus point means a point or points accrued by an applicant for preference in a random permit drawing in which the number of points determines the number of entries in the permit drawing.

Source: Laws 2020, LB287, § 3.

Effective date November 14, 2020.

37-237.02 Preference point, defined.

Preference point means a point or points accrued by an applicant for preference in a structured random permit drawing in which the draw is

structured by the number of preference points and the applicants with the most points are drawn first.

Source: Laws 2020, LB287, § 4.
Effective date November 14, 2020.

37-247.01 Wildlife abatement, defined.

Wildlife abatement means the use of a trained raptor to frighten, flush, haze, take, or kill certain wildlife to manage depredation, damage, or other threats to human health and safety or commerce caused by such wildlife.

Source: Laws 2019, LB374, § 3.

ARTICLE 3

COMMISSION POWERS AND DUTIES

(a) GENERAL PROVISIONS

Section

37-317. Commission; disseminate information and promotional materials.

(b) FUNDS

37-327.02. Game and Parks Commission Capital Maintenance Fund; created; use; investment.

37-327.03. Game and Parks State Park Improvement and Maintenance Fund; created; use; investment.

(a) GENERAL PROVISIONS

37-317 Commission; disseminate information and promotional materials.

The commission may disseminate information and promotional materials regarding the state park system and the wildlife resources of the state in order to inform the public of the outdoor recreation opportunities to be found in Nebraska.

Source: Laws 1998, LB 922, § 75; Laws 2020, LB287, § 5.
Effective date November 14, 2020.

(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 eight 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; Laws 2018, LB945, § 10.

Cross References

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

37-327.03 Game and Parks State Park Improvement and Maintenance Fund; created; use; investment.

The Game and Parks State Park Improvement and Maintenance Fund is created. The fund shall consist of transfers made by the Legislature, money credited to the fund pursuant to section 60-3,254, and any gifts, grants, bequests, or donations to the fund. The money credited to the fund pursuant to section 60-3,254 shall be used only for the improvement and maintenance of state recreational trails as defined in section 37-338. Any other money in the fund shall be used to build, repair, renovate, rehabilitate, restore, modify, or improve any infrastructure in the state park 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.

Source: Laws 2014, LB906, § 4; Laws 2020, LB944, § 3.
 Operative date January 1, 2021.

Cross References

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

**ARTICLE 4
 PERMITS AND LICENSES**

(a) GENERAL PERMITS

- Section 37-407. Hunting, fishing, and fur-harvesting permits; fees.
- 37-409. Hunting, fishing, and fur-harvesting permits; lost permit; replacement; fee.
- 37-415. Lifetime fur-harvesting, fishing, hunting, or combination permit; fees; replacement; rules and regulations.
- 37-426. Taking birds, animals, and aquatic organisms; stamps; when required; exhibit on request; fees.
- 37-438. Annual, temporary, and disabled veteran permits; fees.

(b) SPECIAL PERMITS AND LICENSES

- 37-447. Permit to hunt deer; commission; powers; issuance; fee; violation; penalty.
- 37-449. Permit to hunt antelope; regulation and limitation by commission; issuance; fees; violation; penalty.
- 37-450. Permit to hunt elk; regulation and limitation by commission; issuance; fee; violation; penalty.
- 37-455. Limited deer, antelope, wild turkey, or elk permit; conditions; fee.
- 37-478. Captive wildlife auction permit; issuance; fee; prohibited acts.
- 37-479. Captive wildlife permit; issuance; fee; prohibited acts; violation; penalty.

Section

- 37-497. Raptors; protection; management; raptor permit; raptor permit for wildlife abatement; captive propagation permit; raptor collecting permit; fees.
- 37-498. Raptors; take or maintain; permit required.
- 37-4,111. Permit to take paddlefish; issuance; fee.

(a) GENERAL PERMITS

37-407 Hunting, fishing, and fur-harvesting permits; fees.

(1) The commission may offer multiple-year permits or combinations of permits at reduced rates and may establish fees pursuant to section 37-327 to be paid to the state for resident and nonresident annual hunting permits, annual fishing permits, three-day fishing permits, one-day fishing permits, combination hunting and fishing permits, fur-harvesting permits, and nonresident two-day hunting permits issued for periods of two consecutive days, as provided in this section.

(2) The fee for a multiple-year permit shall be established by the commission pursuant to section 37-327 and shall not be more than the number of years the permit will be valid times the fee required for an annual permit as provided in subsection (3) or (4) of this section. Payment for a multiple-year permit shall be made in a lump sum at the time of application. A replacement multiple-year permit may be issued under section 37-409 if the original is lost or destroyed.

(3) Resident fees shall be (a) not more than eighteen dollars for an annual hunting permit, (b) not more than twenty-four dollars for an annual fishing permit, (c) not more than fifteen dollars for a three-day fishing permit, (d) not more than nine dollars for a one-day fishing permit, (e) not more than thirty-nine dollars for an annual fishing and hunting permit, and (f) not more than twenty dollars for an annual fur-harvesting permit.

(4) Nonresident fees shall be (a) not more than two hundred sixty dollars for a period of time specified by the commission for fur harvesting one thousand or less fur-bearing animals and not more than seventeen dollars and fifty cents additional for each one hundred or part of one hundred fur-bearing animals harvested, (b)(i) for persons sixteen years of age and older, not more than one hundred six dollars for an annual hunting permit and (ii) for persons under sixteen years of age, not less than the fee required pursuant to subdivision (3)(a) of this section for an annual hunting permit, (c) not more than seventy-three dollars for a two-day hunting permit plus the cost of a habitat stamp, (d) not more than twelve dollars for a one-day fishing permit, (e) not more than twenty-two dollars for a three-day fishing permit, (f) not more than sixty-six dollars for an annual fishing permit, and (g)(i) for persons sixteen years of age and older, not more than one hundred fifty-nine dollars for an annual fishing and hunting permit and (ii) for persons under sixteen years of age, not less than the fee required pursuant to subdivision (3)(e) of this section for an annual fishing and hunting permit.

(5) The commission may offer permits or combinations of permits at temporarily reduced rates for specific events or during specified timeframes.

Source: Laws 1929, c. 112, II, § 4, p. 410; C.S.1929, § 37-204; Laws 1935, c. 84, § 2, p. 275; Laws 1939, c. 44, § 1, p. 203; C.S.Supp.,1941, § 37-204; Laws 1943, c. 94, § 3, p. 323; R.S.1943, § 37-204; Laws 1945, c. 78, § 1, p. 288; Laws 1947, c. 132, § 1, p. 374; Laws 1949, c. 101, § 1, p. 278; Laws 1955, c. 130, § 1, p. 376; Laws

1957, c. 140, § 2, p. 475; Laws 1959, c. 150, § 1, p. 568; Laws 1963, c. 203, § 1, p. 654; Laws 1963, c. 202, § 2, p. 652; Laws 1965, c. 195, § 1, p. 594; Laws 1967, c. 215, § 1, p. 576; Laws 1969, c. 290, § 1, p. 1060; Laws 1972, LB 777, § 1; Laws 1974, LB 811, § 4; Laws 1975, LB 489, § 1; Laws 1976, LB 861, § 4; Laws 1977, LB 129, § 1; Laws 1979, LB 78, § 1; Laws 1979, LB 553, § 1; Laws 1981, LB 72, § 4; Laws 1987, LB 105, § 2; Laws 1989, LB 34, § 5; Laws 1993, LB 235, § 6; Laws 1995, LB 579, § 1; Laws 1995, LB 583, § 1; R.S.Supp.,1996, § 37-204; Laws 1998, LB 922, § 117; Laws 2001, LB 111, § 1; Laws 2002, LB 1003, § 19; Laws 2003, LB 306, § 1; Laws 2005, LB 162, § 2; Laws 2007, LB299, § 2; Laws 2009, LB105, § 5; Laws 2011, LB41, § 4; Laws 2016, LB745, § 4; Laws 2020, LB287, § 6.
Effective date November 14, 2020.

37-409 Hunting, fishing, and fur-harvesting permits; lost permit; replacement; fee.

The commission may issue a replacement permit for hunting, fishing, both hunting and fishing, or fur harvesting or for such other permits as may be issued by the commission to any person who has lost his or her original permit upon receipt from such person of satisfactory proof of purchase and an affidavit of loss of such original permit. The commission shall prescribe the procedures for applying for a replacement permit and may authorize electronic issuance. The commission may also designate agents to issue replacement permits pursuant to section 37-406. A fee of not more than five dollars, as established by the commission, shall be charged for the issuance of each replacement permit, except that no such fee shall be charged for replacement of any permits exempt from the payment of fees, lifetime permits, or permits issued under section 37-421 or 37-421.01.

Source: Laws 1959, c. 151, § 1, p. 576; Laws 1967, c. 216, § 3, p. 580; Laws 1981, LB 72, § 5; Laws 1993, LB 235, § 7; R.S.1943, (1993), § 37-204.01; Laws 1998, LB 922, § 119; Laws 1999, LB 176, § 21; Laws 2001, LB 111, § 2; Laws 2020, LB287, § 7.
Effective date November 14, 2020.

37-415 Lifetime fur-harvesting, fishing, hunting, or combination permit; fees; replacement; rules and regulations.

(1) The commission may issue to any Nebraska resident a lifetime fur-harvesting, fishing, hunting, or combination hunting and fishing permit upon application and payment of the appropriate fee. The fee for a resident lifetime fur-harvesting permit shall be not more than two hundred ninety-nine dollars, the fee for a resident lifetime hunting permit shall be not more than three hundred ninety-six dollars, the fee for a resident lifetime fishing permit shall be not more than four hundred fifty-seven dollars plus the cost of a lifetime aquatic habitat stamp, and the fee for a resident lifetime combination hunting and fishing permit shall be not more than seven hundred ninety-two dollars plus the cost of a lifetime aquatic habitat stamp, as such fees are established by the commission pursuant to section 37-327. Payment of the fee shall be made in a lump sum at the time of application.

(2) A resident lifetime permit shall not be made invalid by reason of the holder subsequently residing outside the state.

(3) The commission may issue to any nonresident a lifetime fishing, hunting, or combination hunting and fishing permit upon application and payment of the appropriate fee. The fee for a nonresident lifetime hunting permit shall be not more than one thousand five hundred sixty-two dollars, the fee for a nonresident lifetime fishing permit shall be not more than one thousand one hundred twenty-five dollars plus the cost of a lifetime aquatic habitat stamp, and the fee for a nonresident lifetime combination hunting and fishing permit shall be not more than two thousand three hundred forty-two dollars plus the cost of a lifetime aquatic habitat stamp, as such fees are established by the commission pursuant to section 37-327. Payment of the fee shall be made in a lump sum at the time of application.

(4) A replacement resident or nonresident lifetime permit may be issued if the original has been lost or destroyed for no additional fee. This subsection applies only to a paper permit and not a commemorative brass plate permit.

(5) The commission may adopt and promulgate rules and regulations to carry out this section and sections 37-416 and 37-417. Such rules and regulations may include, but need not be limited to, establishing fees which vary based on the age of the applicant.

Source: Laws 1983, LB 173, § 1; Laws 1993, LB 235, § 4; R.S.1943, (1993), § 37-202.01; Laws 1998, LB 922, § 125; Laws 1999, LB 176, § 24; Laws 2001, LB 111, § 5; Laws 2003, LB 306, § 2; Laws 2005, LB 162, § 4; Laws 2008, LB1162, § 1; Laws 2009, LB105, § 8; Laws 2016, LB745, § 5; Laws 2020, LB287, § 8. Effective date November 14, 2020.

37-426 Taking birds, animals, and aquatic organisms; stamps; when required; exhibit on request; fees.

(1) Except as provided in subsection (4) of this section:

(a) No resident of Nebraska sixteen years of age or older and no nonresident of Nebraska regardless of age shall hunt, harvest, or possess any game bird, upland game bird, game animal, or fur-bearing animal unless, at the time of such hunting, harvesting, or possessing, such person has an unexpired habitat stamp as prescribed by the rules and regulations of the commission prior to the time of hunting, harvesting, or possessing such bird or animal;

(b) No resident or nonresident of Nebraska shall take or possess any aquatic organism requiring a Nebraska fishing permit, including any fish, bullfrog, snapping turtle, tiger salamander, or mussel, unless, at the time of such taking or possessing, such person has an unexpired aquatic habitat stamp as prescribed by the rules and regulations of the commission prior to the time of taking or possessing a fish, bullfrog, snapping turtle, tiger salamander, or mussel; and

(c) No resident of Nebraska sixteen years of age or older and no nonresident of Nebraska regardless of age shall hunt, harvest, or possess any migratory waterfowl unless, at the time of such hunting, harvesting, or possessing, such person has an unexpired Nebraska migratory waterfowl stamp as prescribed by the rules and regulations of the commission prior to the time of hunting, harvesting, or possessing such migratory waterfowl.

(2) The commission may issue a lifetime habitat stamp, lifetime Nebraska migratory waterfowl stamp, or lifetime aquatic habitat stamp upon application and payment of the appropriate fee. The fee for a lifetime stamp shall be not more than twenty times the fee required in subsection (5) of this section for an annual habitat stamp, annual Nebraska migratory waterfowl stamp, or annual aquatic habitat stamp. Payment of such fee shall be made in a lump sum at the time of application. A replacement lifetime stamp may be issued if the original is lost or destroyed at no additional fee. This subsection applies only to a paper permit and not a commemorative brass plate permit.

(3) The commission may issue a multiple-year habitat stamp, multiple-year Nebraska migratory waterfowl stamp, or multiple-year aquatic habitat stamp upon application and payment of the appropriate fee. The fee for such multiple-year stamps shall be established by the commission pursuant to section 37-327 and shall not be more than the number of years the stamp is valid times the fee required in subsection (5) of this section for an annual habitat stamp, annual Nebraska migratory waterfowl stamp, or annual aquatic habitat stamp. Payment of such fee shall be made in a lump sum at the time of application. A replacement multiple-year stamp may be issued if the original is lost or destroyed at no additional fee.

(4) Habitat stamps are not required for holders of limited permits issued under section 37-455. Aquatic habitat stamps are not required (a) when a fishing permit is not required, (b) for holders of permits pursuant to section 37-424, or (c) for holders of lifetime fishing permits or lifetime combination hunting and fishing permits purchased prior to January 1, 2006. Nebraska migratory waterfowl stamps are not required for hunting, harvesting, or possessing any species other than ducks, geese, or brant. For purposes of this section, a showing of proof of the electronic issuance of a stamp by the commission shall fulfill the requirements of this section.

(5)(a) Any person to whom a stamp has been issued shall, immediately upon request, exhibit evidence of issuance of the stamp to any officer. Any person hunting, fishing, harvesting, or possessing any game bird, upland game bird, game animal, or fur-bearing animal or any aquatic organism requiring a fishing permit in this state without evidence of issuance of the appropriate stamp shall be deemed to be without such stamp.

(b) An annual habitat stamp shall be issued upon the payment of a fee of not more than twenty-five dollars per stamp. A multiple-year habitat stamp shall be issued in conjunction with a multiple-year hunting permit or a multiple-year combination hunting and fishing permit at a fee of not more than twenty-five dollars times the number of years the multiple-year permit is valid.

(c) An aquatic habitat stamp shall be issued in conjunction with each fishing permit for a fee of not more than fifteen dollars per stamp for annual fishing permits, three-day fishing permits, or combination hunting and fishing permits, a fee of not more than fifteen dollars times the number of years the multiple-year fishing permit or a multiple-year combination hunting and fishing permit is valid, and a fee of not more than twenty times the fee required for an annual aquatic habitat stamp for lifetime fishing or combination hunting and fishing permits. The fee established under section 37-407 for a one-day fishing permit shall include an aquatic habitat stamp. One dollar from the sale of each one-day fishing permit shall be remitted to the State Treasurer for credit to the Nebraska Aquatic Habitat Fund.

(d) An annual Nebraska migratory waterfowl stamp shall be issued upon the payment of a fee of not more than sixteen dollars per stamp. A multiple-year Nebraska migratory waterfowl stamp may only be issued in conjunction with a multiple-year hunting permit or a multiple-year combination hunting and fishing permit at a fee of not more than the annual fee times the number of years the multiple-year permit is valid.

(e) The commission shall establish the fees pursuant to section 37-327.

(6) The commission may offer stamps or combinations of stamps at temporarily reduced rates for specific events or during specified timeframes in conjunction with other permit sales.

Source: Laws 1976, LB 861, § 7; Laws 1981, LB 72, § 12; Laws 1983, LB 170, § 3; Laws 1991, LB 340, § 1; Laws 1993, LB 235, § 15; Laws 1996, LB 584, § 9; Laws 1997, LB 19, § 3; R.S.Supp., 1997, § 37-216.01; Laws 1998, LB 922, § 136; Laws 1999, LB 176, § 27; Laws 2001, LB 111, § 6; Laws 2002, LB 1003, § 20; Laws 2003, LB 305, § 11; Laws 2003, LB 306, § 3; Laws 2005, LB 162, § 8; Laws 2007, LB299, § 4; Laws 2008, LB1162, § 2; Laws 2009, LB105, § 10; Laws 2011, LB41, § 9; Laws 2016, LB745, § 9; Laws 2020, LB287, § 9.

Effective date November 14, 2020.

37-438 Annual, temporary, and disabled veteran permits; fees.

(1) The commission shall devise annual, temporary, and disabled veteran permits.

(2) The annual permit may be purchased by any person and shall be valid through December 31 in the year for which the permit is issued. The fee for the annual permit for a resident motor vehicle shall be not more than thirty-five dollars per permit. The fee for the annual permit for a nonresident motor vehicle shall not be less than the fee for a resident motor vehicle and not more than sixty-five dollars. The commission shall establish such fees by the adoption and promulgation of rules and regulations.

(3) A temporary permit may be purchased by any person and shall be valid until noon of the day following the date of issue. The fee for the temporary permit for a resident motor vehicle shall be not more than seven dollars. The fee for the temporary permit for a nonresident motor vehicle shall be not more than twelve dollars. The commission shall establish such fees by the adoption and promulgation of rules and regulations. The commission may issue temporary permits which are either valid for any area or valid for a single area.

(4)(a) A veteran who is a resident of Nebraska shall, upon application and without payment of any fee, be issued one disabled veteran permit for a resident motor vehicle if the veteran:

(i) Was discharged or separated with a characterization of honorable or general (under honorable conditions); and

(ii)(A) Is rated by the United States Department of Veterans Affairs as fifty percent or more disabled as a result of service in the armed forces of the United States; or

(B) Is receiving a pension from the United States Department of Veterans Affairs as a result of total and permanent disability, which disability was not incurred in the line of duty in the military service.

(b) All disabled veteran permits issued pursuant to this subsection shall be perpetual and shall become void only upon termination of eligibility as provided in this subsection.

(c) The commission may adopt and promulgate rules and regulations necessary to carry out this subsection.

(5) The commission may offer permits or combinations of permits at temporarily reduced rates for specific events or during specified timeframes.

Source: Laws 1977, LB 81, § 5; Laws 1978, LB 742, § 7; Laws 1980, LB 723, § 3; Laws 1981, LB 74, § 1; Laws 1983, LB 199, § 1; Laws 1993, LB 235, § 32; R.S.1943, (1993), § 37-1105; Laws 1998, LB 922, § 148; Laws 1999, LB 176, § 35; Laws 2003, LB 122, § 1; Laws 2005, LB 162, § 14; Laws 2008, LB1162, § 3; Laws 2011, LB421, § 1; Laws 2016, LB745, § 10; Laws 2020, LB287, § 10; Laws 2020, LB770, § 1.

Effective date November 14, 2020.

(b) SPECIAL PERMITS AND LICENSES

37-447 Permit to hunt deer; commission; powers; issuance; fee; violation; penalty.

(1) The commission may issue permits for the hunting of deer and adopt and promulgate rules and regulations and pass commission orders pursuant to section 37-314 to prescribe limitations for the hunting, transportation, and possession of deer. The commission may offer permits or combinations of permits at temporarily reduced rates for specific events or during specified timeframes. The commission may specify by rule and regulation the information to be required on applications for such permits. Rules and regulations for the hunting, transportation, and possession of deer may include, but not be limited to, rules and regulations as to the type, caliber, and other specifications of firearms and ammunition used and specifications for bows and arrows used. Such rules and regulations may further specify and limit the method of hunting deer and may provide for dividing the state into management units or areas, and the commission may enact different deer hunting regulations for the different management units pertaining to sex, species, and age of the deer hunted.

(2) The number of such permits may be limited as provided by the rules and regulations of the commission, and except as provided in section 37-454, the permits shall be allocated in an impartial manner. Whenever the commission deems it advisable to limit the number of permits issued for any or all management units, the commission shall, by rules and regulations, determine eligibility to obtain such permits. In establishing eligibility, the commission may give preference to persons who did not receive a permit or a specified type of permit during the previous year or years.

(3) Such permits may be issued to allow deer hunting in the Nebraska National Forest and other game reserves and such other areas as the commission may designate whenever the commission deems that permitting such hunting will not be detrimental to the proper preservation of wildlife in Nebraska in such forest, reserves, or areas.

(4)(a) The commission may, pursuant to section 37-327, establish and charge a nonrefundable application fee of not more than seven dollars for deer permits

in those management units awarded on the basis of a random drawing. The commission shall, pursuant to section 37-327, establish and charge a fee of not more than thirty-nine dollars for residents and not more than two hundred eighty-four dollars for nonresidents for each permit issued under this section except as otherwise provided in subdivision (b) of this subsection and subsection (6) of this section. The commission may, pursuant to section 37-327, establish and charge a fee of not more than twenty-four dollars for residents and not more than seventy-two dollars for nonresidents for the issuance of a preference point, in addition to any application fee, in lieu of entering the draw for a deer permit during the application period for the random drawing.

(b) The fee for a statewide buck-only permit limited to white-tailed deer shall be no more than two and one-half times the amount of a regular deer permit. The fee for a statewide buck-only deer permit that allows harvest of mule deer shall be no more than five times the amount of a regular deer permit.

(5)(a) The commission may issue nonresident permits after preference has been given for the issuance of resident permits as provided in rules and regulations adopted and promulgated by the commission.

(b) In management units specified by the commission, the commission may issue nonresident permits after resident preference has been provided by allocating at least eighty-five percent of the available permits to residents. The commission may require a predetermined application period for permit applications in specified management units. Such permits shall be issued after a reasonable period for making application, as established by the commission, has expired. When more valid applications are received for a designated management unit than there are permits available, such permits shall be allocated on the basis of a random drawing. All valid applications received during the predetermined application period shall be considered equally in any such random drawing without regard to time of receipt of such applications by the commission.

(6) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for residents and not more than forty-five dollars for nonresidents for a youth deer permit.

(7) Any person violating the rules and regulations adopted and promulgated or commission orders passed pursuant to this section shall be guilty of a Class II misdemeanor and shall be fined at least one hundred dollars upon conviction.

Source: Laws 1945, c. 85, § 1, p. 305; Laws 1947, c. 133, § 1, p. 376; Laws 1949, c. 103, § 1(1), p. 282; Laws 1951, c. 109, § 1, p. 517; Laws 1953, c. 124, § 1, p. 389; Laws 1957, c. 141, § 1, p. 477; Laws 1959, c. 156, § 1, p. 584; Laws 1969, c. 292, § 1, p. 1063; Laws 1972, LB 777, § 3; Laws 1974, LB 767, § 1; Laws 1976, LB 861, § 6; Laws 1979, LB 437, § 1; Laws 1981, LB 72, § 11; Laws 1984, LB 1001, § 1; Laws 1985, LB 557, § 2; Laws 1993, LB 235, § 13; Laws 1994, LB 1088, § 4; Laws 1995, LB 583, § 2; Laws 1995, LB 862, § 1; Laws 1996, LB 584, § 6; Laws 1997, LB 107, § 2; R.S.Supp., 1997, § 37-215; Laws 1998, LB 922, § 157; Laws 1999, LB 176, § 42; Laws 2003, LB 306, § 4; Laws 2005, LB 162, § 15; Laws 2007, LB299, § 7; Laws 2009, LB105, § 15; Laws

2013, LB94, § 1; Laws 2013, LB499, § 5; Laws 2016, LB745, § 11; Laws 2020, LB287, § 11.

Effective date November 14, 2020.

37-449 Permit to hunt antelope; regulation and limitation by commission; issuance; fees; violation; penalty.

(1) The commission may issue permits for hunting antelope and may adopt and promulgate separate and, when necessary, different rules and regulations therefor within the limitations prescribed in sections 37-447 and 37-452 for hunting deer. The commission may offer permits or combinations of permits at reduced rates for specific events or during specified timeframes.

(2) The commission may, pursuant to section 37-327, establish and charge a nonrefundable application fee of not more than seven dollars for antelope permits in those management units awarded on the basis of a random drawing. The commission shall, pursuant to section 37-327, establish and charge a fee of not more than thirty-nine dollars for residents and not more than one hundred ninety-eight dollars for nonresidents for each permit issued under this section except as provided in subsection (4) of this section. The commission may, pursuant to section 37-327, establish and charge a fee of not more than twenty-four dollars for residents and not more than seventy-two dollars for nonresidents for the issuance of a preference point, in addition to any application fee, in lieu of entering the draw for an antelope permit during the application period for the random drawing.

(3) The provisions for the distribution of deer permits and the authority of the commission to determine eligibility of applicants for permits as described in sections 37-447 and 37-452 shall also apply to the distribution of antelope permits.

(4) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for residents and not more than forty-five dollars for nonresidents for a youth antelope permit.

(5) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class II misdemeanor and shall be fined at least one hundred dollars upon conviction.

Source: Laws 1998, LB 922, § 159; Laws 2003, LB 305, § 14; Laws 2003, LB 306, § 5; Laws 2007, LB299, § 8; Laws 2009, LB105, § 16; Laws 2016, LB745, § 12; Laws 2020, LB287, § 12.

Effective date November 14, 2020.

37-450 Permit to hunt elk; regulation and limitation by commission; issuance; fee; violation; penalty.

(1) The commission may issue permits for hunting elk and may adopt and promulgate separate and, when necessary, different rules and regulations therefor within the limitations prescribed in sections 37-447 and 37-452 for hunting deer.

(2) The commission shall, pursuant to section 37-327, establish and charge (a) a nonrefundable application fee of not more than twelve dollars for a resident elk permit and not to exceed three times such amount for a nonresident elk permit and (b) a fee of not more than one hundred ninety-eight dollars for each resident elk permit issued and three times such amount for each

nonresident elk permit issued. The commission may, pursuant to section 37-327, establish and charge a fee of not more than twenty-four dollars for residents and not more than seventy-two dollars for nonresidents for the issuance of a preference point or a bonus point, in addition to any application fee, in lieu of entering the draw for an elk permit during the application period for the random drawing.

(3) An applicant shall not be issued a resident elk permit that allows the harvest of an antlered elk more than once every five years. A person may only harvest one antlered elk in his or her lifetime except when harvesting an antlered elk with a limited permit to hunt elk pursuant to subdivision (1)(b) of section 37-455 or an auction or lottery permit pursuant to section 37-455.01.

(4) The provisions for the distribution of deer permits and the authority of the commission to determine eligibility of applicants for permits as described in sections 37-447 and 37-452 shall also apply to the distribution of elk permits.

(5) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class III misdemeanor and shall be fined at least two hundred dollars upon conviction.

Source: Laws 1998, LB 922, § 160; Laws 2003, LB 306, § 6; Laws 2005, LB 162, § 16; Laws 2007, LB299, § 9; Laws 2009, LB105, § 17; Laws 2011, LB41, § 12; Laws 2013, LB94, § 2; Laws 2016, LB745, § 13; Laws 2020, LB287, § 13.
Effective date November 14, 2020.

37-455 Limited deer, antelope, wild turkey, or elk permit; conditions; fee.

(1) The commission may issue a limited permit for deer, antelope, wild turkey, or elk to a person who is a qualifying landowner or leaseholder or a member of such person's immediate family as described in this section. The commission may issue nonresident landowner limited permits after preference has been given for the issuance of resident permits as provided in rules and regulations adopted and promulgated by the commission. Except as provided in subsection (4) of this section, a permit shall be valid during the predetermined period established by the commission pursuant to sections 37-447 to 37-450, 37-452, 37-456, or 37-457. Upon receipt of an application in proper form as prescribed by the rules and regulations of the commission, the commission may issue (a) a limited deer, antelope, or wild turkey permit valid for hunting on all of the land which is owned or leased by the qualifying landowner or leaseholder if such lands are identified in the application or (b) a limited elk permit valid for hunting on the entire elk management unit of which the land of the qualifying landowner or leaseholder included in the application is a part.

(2)(a) The commission shall adopt and promulgate rules and regulations prescribing procedures and forms and create requirements for documentation by an applicant or permittee to determine whether the applicant or permittee is a Nebraska resident and is a qualifying landowner or leaseholder of the described property or is a member of the immediate family of such qualifying landowner or leaseholder. The commission may adopt and promulgate rules and regulations that create requirements for documentation to designate one qualifying landowner among partners of a partnership or officers or shareholders of a corporation that owns or leases eighty acres or more of farm or ranch land for agricultural purposes and among beneficiaries of a trust that owns or leases eighty acres or more of farm or ranch land for agricultural purposes.

Only a person who is a qualifying landowner or leaseholder or a member of such person's immediate family may apply for a limited permit. An applicant may apply for no more than one permit per species per year except as otherwise provided in subsection (4) of this section and the rules and regulations of the commission. For purposes of this section, member of a person's immediate family means and is limited to the spouse of such person, any child or stepchild of such person or of the spouse of such person, any spouse of any such child or stepchild, any sibling of such person sharing ownership in the property, and any spouse of any such sibling.

(b) The conditions applicable to permits issued pursuant to sections 37-447 to 37-450, 37-452, 37-456, or 37-457, whichever is appropriate, shall apply to limited permits issued pursuant to this section, except that the commission may pass commission orders for species harvest allocation pertaining to the sex and age of the species harvested which are different for a limited permit than for other hunting permits. For purposes of this section, white-tailed deer and mule deer shall be treated as one species.

(3)(a) To qualify for a limited permit to hunt deer or antelope, the applicant shall be a Nebraska resident who (i) owns or leases eighty acres or more of farm or ranch land for agricultural purposes or a member of such person's immediate family or (ii) is the partner, officer, shareholder, or beneficiary designated as the qualifying landowner by a partnership, corporation, or trust as provided in the rules and regulations under subdivision (2)(a) of this section or a member of the immediate family of the partner, officer, shareholder, or beneficiary. The number of limited permits issued annually per species for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by eighty. The fee for a limited permit to hunt deer or antelope shall be one-half the fee for the regular permit for such species.

(b) A nonresident of Nebraska who owns three hundred twenty acres or more of farm or ranch land in the State of Nebraska for agricultural purposes or a member of such person's immediate family may apply for a limited deer or antelope permit. The number of limited permits issued annually per species for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by three hundred twenty. The fee for such a permit to hunt deer or antelope shall be one-half the fee for a nonresident permit to hunt such species.

(c) The commission may adopt and promulgate rules and regulations providing for the issuance of an additional limited deer permit to a qualified individual for the taking of a deer without antlers at a fee equal to or less than the fee for the original limited permit.

(4)(a) In addition to any limited permit to hunt deer issued to a qualifying landowner under subsection (3) of this section, the commission shall issue up to four limited permits to hunt deer during the three days of Saturday through Monday immediately preceding the opening day of firearm deer hunting season to any qualifying landowner meeting the requirements of subdivision (b) of this subsection and designated members of his or her immediate family. The fee for each permit issued under this subsection shall be five dollars. Permits shall be issued subject to the following:

(i) No more than four permits may be issued per qualifying landowner to the landowner or designated members of his or her immediate family, except that no more than one permit shall be issued per person for the qualifying landowner or any designated member of his or her immediate family;

(ii) Of the four permits that may be issued, no more than two permits may be issued to persons who are younger than nineteen years of age and no more than two permits may be issued to persons who are nineteen years of age or older; and

(iii) For a Nebraska resident landowner, the number of permits issued shall not exceed the total acreage of the farm or ranch divided by eighty, and for a nonresident landowner, the number of permits issued shall not exceed the total acreage of the farm or ranch divided by three hundred twenty.

(b) For purposes of this subsection, the qualifying criteria for a Nebraska resident described in subdivisions (3)(a)(i) and (ii) of this section and the ownership criteria for a nonresident of Nebraska described in subdivision (3)(b) of this section apply.

(c) The commission may adopt and promulgate rules and regulations to carry out this subsection.

(5)(a) To qualify for a limited permit to hunt wild turkey, the applicant shall be a Nebraska resident who (i) owns or leases eighty acres or more of farm or ranch land for agricultural purposes or a member of such person's immediate family or (ii) is the partner, officer, shareholder, or beneficiary designated as the qualifying landowner by a partnership, corporation, or trust as provided in the rules and regulations under subdivision (2)(a) of this section or a member of the immediate family of the partner, officer, shareholder, or beneficiary. The number of limited permits issued annually per season for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by eighty. An applicant may apply for no more than one limited permit per season. The fee for a limited permit to hunt wild turkey shall be one-half the fee for the regular permit to hunt wild turkey.

(b) A nonresident of Nebraska who owns three hundred twenty acres or more of farm or ranch land in the State of Nebraska for agricultural purposes or a member of such person's immediate family may apply for a limited permit to hunt wild turkey. Only one limited wild turkey permit per three hundred twenty acres may be issued annually for each wild turkey season under this subdivision. The fee for such a permit to hunt shall be one-half the fee for a nonresident permit to hunt wild turkey.

(6) To qualify for a limited permit to hunt elk, (a) the applicant shall be (i) a Nebraska resident who owns three hundred twenty acres or more of farm or ranch land for agricultural purposes, (ii) a Nebraska resident who leases six hundred forty acres or more of farm or ranch land for agricultural purposes or has a leasehold interest and an ownership interest in farm or ranch land used for agricultural purposes which when added together totals at least six hundred forty acres, (iii) a nonresident of Nebraska who owns at least one thousand two hundred eighty acres of farm or ranch land for agricultural purposes, or (iv) a member of such owner's or lessee's immediate family and (b) the qualifying farm or ranch land of the applicant shall be within an area designated as an elk management zone by the commission in its rules and regulations. An applicant shall not be issued a limited bull elk permit more than once every three years, and the commission may give preference to a person who did not receive a limited elk permit or a specified type of limited elk permit during the previous years. The fee for a resident landowner limited permit to hunt elk shall not exceed one-half the fee for the regular permit to hunt elk. The fee for a nonresident landowner limited permit to hunt elk shall not exceed three times

the cost of a resident elk permit. The number of applications allowed for limited elk permits for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by the minimum acreage requirements established for the property. No more than one person may qualify for the same described property.

Source: Laws 1969, c. 761, § 1, p. 2878; Laws 1974, LB 767, § 2; Laws 1975, LB 270, § 1; Laws 1983, LB 170, § 2; Laws 1985, LB 557, § 5; Laws 1993, LB 235, § 14; Laws 1996, LB 584, § 7; Laws 1997, LB 107, § 3; Laws 1997, LB 173, § 3; R.S.Supp., 1997, § 37-215.03; Laws 1998, LB 922, § 165; Laws 2001, LB 111, § 9; Laws 2002, LB 1003, § 23; Laws 2003, LB 305, § 16; Laws 2004, LB 1149, § 1; Laws 2009, LB105, § 19; Laws 2013, LB94, § 3; Laws 2013, LB499, § 7; Laws 2019, LB127, § 1; Laws 2020, LB126, § 1.

Effective date November 14, 2020.

37-478 Captive wildlife auction permit; issuance; fee; prohibited acts.

(1) To conduct an auction in this state of captive wild birds, captive wild mammals, or captive wildlife as specified in subsection (1) of section 37-477, a person shall apply to the commission on a form prescribed by the commission for a captive wildlife auction permit. An applicant for a permit shall specify the dates of the auction and shall apply for a permit for each auction to be held in the state. The application for the permit shall include the applicant's social security number. The fee for such permit shall be not more than sixty-five dollars, as established by the commission pursuant to section 37-327. The commission shall adopt and promulgate rules and regulations specifying application requirements and procedures, reporting and inspection requirements, and other requirements related to auction activities.

(2) A permitholder shall not (a) take wild birds, wild mammals, or other wildlife from the wild in Nebraska or (b) purchase wild birds, wild mammals, or other wildlife from any person other than the commission or a person authorized to propagate and dispose of wild birds, wild mammals, or other wildlife. A permit under this section is not required for an auction of domesticated cervine animals as defined in section 54-2914.

Source: Laws 1957, c. 151, § 2, p. 490; Laws 1981, LB 72, § 20; Laws 1986, LB 558, § 2; Laws 1993, LB 235, § 26; R.S.1943, (1993), § 37-714; Laws 1998, LB 922, § 188; Laws 1999, LB 176, § 57; Laws 2008, LB1162, § 10; Laws 2020, LB344, § 59.

Effective date November 14, 2020.

37-479 Captive wildlife permit; issuance; fee; prohibited acts; violation; penalty.

(1) To purchase, possess, propagate, or sell captive wild birds, captive wild mammals, or captive wildlife as specified in subsection (1) of section 37-477 or to sell parts thereof, except as provided in section 37-505, a person shall apply to the commission on a form prescribed by the commission for a captive wildlife permit. The commission shall adopt and promulgate rules and regulations specifying application requirements and procedures. The permit shall expire on December 31. The application for the permit shall include the applicant's social security number. The annual fee for such permit shall be not

more than thirty dollars, as established by the commission pursuant to section 37-327. A holder of a captive wildlife permit shall report to the commission by January 15 for the preceding calendar year on forms provided by the commission. The commission shall adopt and promulgate rules and regulations specifying the requirements for the reports.

(2) A permitholder shall not (a) take wild birds, wild mammals, or wildlife from the wild in Nebraska or (b) purchase wild birds, wild mammals, or wildlife from any person other than the commission or a person authorized to propagate and dispose of wild birds, wild mammals, or wildlife. A permit under this section is not required for possession or production of domesticated cervine animals as defined in section 54-2914.

(3) It shall be unlawful to lure or entice wildlife into a domesticated cervine animal facility for the purpose of containing such wildlife. Any person violating this subsection shall be guilty of a Class II misdemeanor and upon conviction shall be fined at least one thousand dollars.

Source: Laws 1957, c. 151, § 3, p. 490; Laws 1981, LB 72, § 21; Laws 1987, LB 379, § 2; Laws 1993, LB 235, § 27; Laws 1997, LB 752, § 92; R.S.Supp., 1997, § 37-715; Laws 1998, LB 922, § 189; Laws 1999, LB 176, § 58; Laws 2008, LB1162, § 11; Laws 2009, LB105, § 24; Laws 2020, LB344, § 60.
Effective date November 14, 2020.

37-497 Raptors; protection; management; raptor permit; raptor permit for wildlife abatement; captive propagation permit; raptor collecting permit; fees.

(1) The commission may take such steps as it deems necessary to provide for the protection and management of raptors. The commission may issue raptor permits for the taking and possession of raptors for the purpose of practicing falconry or wildlife abatement.

(2) A raptor permit for falconry may be issued only to a resident of the state who has paid the fees required in this subsection and has passed a written and oral examination concerning raptors given by the commission or an authorized representative of the commission. The commission shall charge a fee for each permit of not more than twenty-three dollars for persons between twelve and seventeen years of age and not more than sixty-one dollars for persons eighteen years of age and older, as established by the commission pursuant to section 37-327. If the applicant fails to pass the examination, he or she shall not be entitled to reapply for a raptor permit for falconry for a period of six months after the date of the examination. No person under twelve years of age shall be issued a raptor permit for falconry. A person between twelve and seventeen years of age may be issued a permit only if he or she is sponsored by an adult who has a valid raptor permit for falconry and appropriate experience. All raptor permits for falconry shall be nontransferable and shall expire three years after the date of issuance. If the commission is satisfied as to the competency and fitness of an applicant whose permit has expired, his or her permit may be renewed without requiring further examination subject to terms and conditions imposed by the commission. The commission shall adopt and promulgate rules and regulations outlining species of raptors which may be taken, captured, or held in possession.

(3) A raptor permit for wildlife abatement may be issued only to a resident of the state who has paid the fees required in this subsection and has agreed to

comply with federal law concerning raptors used for wildlife abatement as attested to in his or her application. The commission shall charge a fee for each permit of not more than twenty-three dollars for persons between twelve and seventeen years of age and not more than sixty-one dollars for persons eighteen years of age and older, as established by the commission pursuant to section 37-327. No person under twelve years of age shall be issued a raptor permit for wildlife abatement. A person between twelve and seventeen years of age may be issued a permit only if he or she is sponsored and supervised by an adult who has a valid raptor permit for wildlife abatement and appropriate experience. All raptor permits for wildlife abatement shall be nontransferable and shall expire three years after the date of issuance. The commission shall adopt and promulgate rules and regulations to carry out this subsection.

(4) The commission may issue captive propagation permits to allow the captive propagation of raptors. A permit may be issued to a resident of the state who has paid the fee required in this subsection. The fee for each permit shall be not more than three hundred five dollars, as established by the commission pursuant to section 37-327. The permit shall be nontransferable, shall expire three years after the date of issuance, and may be renewed under terms and conditions established by the commission. The commission shall authorize the species and the number of each such species which may be taken, captured, acquired, or held in possession. The commission shall adopt and promulgate rules and regulations governing the issuance and conditions of captive propagation permits.

(5) The commission may issue raptor collecting permits to nonresidents as prescribed by the rules and regulations of the commission. The fee for a permit shall be not more than two hundred sixty-five dollars, as established by the commission pursuant to section 37-327. A raptor collecting permit shall be nontransferable. The commission shall adopt and promulgate rules and regulations governing the issuance and conditions of raptor collecting permits.

Source: Laws 1971, LB 733, § 1; Laws 1987, LB 154, § 2; Laws 1990, LB 940, § 1; Laws 1993, LB 235, § 28; R.S.1943, (1993), § 37-720; Laws 1998, LB 922, § 207; Laws 2003, LB 306, § 14; Laws 2008, LB1162, § 14; Laws 2011, LB41, § 23; Laws 2016, LB745, § 18; Laws 2019, LB374, § 4.

37-498 Raptors; take or maintain; permit required.

(1) It shall be unlawful for any person to take or attempt to take or maintain a raptor in captivity, except as otherwise provided by law or by rule or regulation of the commission, unless he or she possesses a raptor permit for falconry, a raptor permit for wildlife abatement, a captive propagation permit, or a raptor collecting permit as required by section 37-497.

(2) No person shall sell, barter, purchase, or offer to sell, barter, or purchase any raptor, raptor egg, or raptor semen, except as permitted under a raptor permit for falconry, a raptor permit for wildlife abatement, or a captive propagation permit issued under section 37-497 or the rules and regulations adopted and promulgated by the commission. Nothing in this section shall be construed to permit any sale, barter, purchase, or offer to sell, barter, or purchase any raptor, raptor egg, or raptor semen taken from the wild.

Source: Laws 1971, LB 733, § 2; Laws 1987, LB 154, § 3; R.S.1943, (1993), § 37-721; Laws 1998, LB 922, § 208; Laws 2011, LB41, § 24; Laws 2019, LB374, § 5.

37-4,111 Permit to take paddlefish; issuance; fee.

The commission may adopt and promulgate rules and regulations to provide for the issuance of permits for the taking of paddlefish. The commission may, pursuant to section 37-327, establish and charge a fee of not more than thirty-five dollars for residents. The fee for a nonresident permit to take paddlefish shall be two times the resident permit fee. In addition, the commission may, pursuant to section 37-327, establish and charge a nonrefundable application fee of not more than seven dollars. The commission may, pursuant to section 37-327, establish and charge a fee of not more than twenty-four dollars for residents and not more than seventy-two dollars for nonresidents for the issuance of a preference point, in addition to any application fee, in lieu of applying for a paddlefish permit during the application period. All fees collected under this section shall be remitted to the State Treasurer for credit to the State Game Fund.

Source: Laws 2002, LB 1003, § 30; Laws 2007, LB299, § 12; Laws 2009, LB105, § 26; Laws 2016, LB745, § 19; Laws 2020, LB287, § 14. Effective date November 14, 2020.

ARTICLE 5**REGULATIONS AND PROHIBITED ACTS**

(a) GENERAL PROVISIONS

Section

37-504. Violations; penalties; exception.

37-505. Game animals, birds, or fish; possession or sale prohibited; exceptions; violation; penalty.

(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.

37-524. Aquatic invasive species; wild or nonnative animals; importation, possession, or release; prohibition; violation; penalty.

37-527. Hunter orange display required; exception; violation; penalty.

(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.

37-505 Game animals, birds, or fish; possession or sale prohibited; exceptions; violation; penalty.

(1) It shall be unlawful to buy, sell, or barter the meat or flesh of game animals or game birds whether such animals or birds were killed or taken within or outside this state. Except as otherwise provided in this section, it shall be unlawful to buy, sell, or barter other parts of game animals or game birds.

(2) It shall be lawful to buy, sell, or barter only the following parts of legally taken antelope, deer, elk, rabbits, squirrels, and upland game birds: The hides, hair, hooves, bones, antlers, and horns of antelope, deer, or elk, the skins, tails, or feet of rabbits and squirrels, and the feathers or skins of upland game birds.

(3) It shall be lawful to pick up, possess, buy, sell, or barter antlers or horns which have been dropped or shed by antelope, deer, or elk. It shall be unlawful to pick up, possess, buy, sell, or barter mountain sheep or any part of a mountain sheep except (a) as permitted by law or rule or regulation of the commission and (b) for possession of mountain sheep or any part of a mountain sheep lawfully obtained in this state or another state or country.

(4) The commission may provide by rules and regulations for allowing, restricting, or prohibiting the acquisition, possession, purchase, sale, or barter

of discarded parts, including, but not limited to, horns and antlers, or parts of dead game animals and upland game birds which have died from natural causes or causes which were not associated with any known illegal acts, which parts are discovered by individuals.

(5) Any domesticated cervine animal as defined in section 54-2914 or any part of such an animal may be bought, sold, or bartered if the animal or parts are appropriately marked for proof of ownership according to rules and regulations adopted and promulgated by the Department of Agriculture.

(6) It shall be unlawful to buy, sell, or barter any sport fish protected by the Game Law at any time whether the fish was killed or taken within or outside this state, except that game fish lawfully shipped in from outside this state by residents of this state or fish lawfully acquired from a person having an aquaculture permit or, in the case of bullheads, pursuant to section 37-545 may be sold in this state. The burden of proof shall be upon any such buyer, seller, or possessor to show by competent and satisfactory evidence that any game fish in his or her possession or sold by him or her was lawfully shipped in from outside this state or was lawfully acquired from one of such sources.

(7) Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1929, c. 112, V, § 5, p. 427; C.S.1929, § 37-505; Laws 1931, c. 72, § 2, p. 194; Laws 1937, c. 89, § 12, p. 297; C.S.Supp.,1941, § 37-505; R.S.1943, § 37-505; Laws 1945, c. 81, § 1, p. 300; Laws 1945, c. 80, § 2, p. 299; Laws 1959, c. 154, § 2, p. 581; Laws 1961, c. 169, § 7, p. 506; Laws 1961, c. 174, § 2, p. 517; Laws 1963, c. 200, § 2, p. 648; Laws 1967, c. 216, § 12, p. 587; Laws 1972, LB 556, § 1; Laws 1981, LB 72, § 17; Laws 1985, LB 557, § 9; Laws 1989, LB 34, § 28; Laws 1989, LB 166, § 2; Laws 1989, LB 172, § 1; Laws 1991, LB 341, § 1; Laws 1993, LB 235, § 24; Laws 1994, LB 1165, § 10; Laws 1995, LB 718, § 1; Laws 1997, LB 107, § 5; Laws 1997, LB 752, § 90; R.S.Supp.,1997, § 37-505; Laws 1998, LB 922, § 225; Laws 2020, LB344, § 61. Effective date November 14, 2020.

(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.

37-524 Aquatic invasive species; wild or nonnative animals; importation, possession, or release; prohibition; violation; penalty.

(1) It shall be unlawful for any person, partnership, limited liability company, association, or corporation to import into the state or possess aquatic invasive species, the animal known as the San Juan rabbit, or any other species of wild vertebrate animal, including domesticated cervine animals as defined in section 54-2914, declared by the commission following public hearing and consultation with the Department of Agriculture to constitute a serious threat to economic or ecologic conditions, except that the commission may authorize by specific written permit the acquisition and possession of such species for educational or scientific purposes. It shall also be unlawful to release to the wild any nonnative bird or nonnative mammal without written authorization from the commission. Any person, partnership, limited liability company, association, or corporation violating the provisions of this subsection shall be guilty of a Class IV misdemeanor.

(2) Following public hearing and consultation with the Department of Agriculture, the commission may, by rule and regulation, regulate or limit the importation and possession of any aquatic invasive species or wild vertebrate animal, including a domesticated cervine animal as defined in section 54-2914, which is found to constitute a serious threat to economic or ecologic conditions.

Source: Laws 1957, c. 139, § 20, p. 474; Laws 1967, c. 222, § 1, p. 597; Laws 1973, LB 331, § 7; Laws 1977, LB 40, § 205; Laws 1993, LB 121, § 203; Laws 1993, LB 830, § 9; Laws 1995, LB 718, § 5; R.S.Supp.,1996, § 37-719; Laws 1998, LB 922, § 244; Laws 2012, LB391, § 8; Laws 2020, LB344, § 62.
Effective date November 14, 2020.

Cross References

Domesticated Cervine Animal Act, possession of certain animals prohibited, see section 54-2324.

37-527 Hunter orange display required; exception; violation; penalty.

(1) For purposes of this section, hunter orange means a daylight fluorescent orange color with a dominant wave length between five hundred ninety-five

and six hundred five nanometers, an excitation purity of not less than eighty-five percent, and a luminance factor of not less than forty percent.

(2) Any person hunting deer, antelope, wild turkey, elk, or mountain sheep during an authorized firearm season in this state shall display on his or her head, chest, and back a total of not less than four hundred square inches of hunter orange material except as exempted by rules and regulations of the commission.

(3) Any person who violates this section shall be guilty of a Class V misdemeanor.

(4) This section shall not apply to archery hunters hunting during a non-center-fire firearm season or in a management unit where a current center-fire firearm season is not open. The commission may adopt and promulgate rules and regulations allowing additional exceptions and establishing requirements for the display of hunter orange during other authorized hunting seasons.

Source: Laws 1972, LB 1216, § 1; R.S.1943, (1993), § 37-215.05; Laws 1998, LB 922, § 247; Laws 1999, LB 176, § 72; Laws 2007, LB299, § 14; Laws 2020, LB287, § 15.
Effective date November 14, 2020.

ARTICLE 6 ENFORCEMENT

Section

37-613. Wildlife; prohibited acts; liquidated damages; schedule; disposition.

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.

37-613 Wildlife; prohibited acts; liquidated damages; schedule; disposition.

(1) Any person who sells, purchases, takes, or possesses contrary to the Game Law any wildlife shall be liable to the State of Nebraska for the damages caused thereby. Such damages shall be:

(a) Twenty-five thousand dollars for each mountain sheep;

(b) Ten thousand dollars for each elk with a minimum of twelve total points and three thousand dollars for any other elk;

(c) Ten thousand dollars for each whitetail deer with a minimum of eight total points and an inside spread between beams of at least sixteen inches, two thousand dollars for any other antlered whitetail deer, and five hundred dollars for each antlerless whitetail deer and whitetail doe deer;

(d) Ten thousand dollars for each mule deer with a minimum of eight total points and an inside spread between beams of at least twenty-two inches and two thousand dollars for any other mule deer;

(e) Five thousand dollars for each antelope with the shortest horn measuring a minimum of fourteen inches in length and one thousand dollars for any other antelope;

(f) One thousand five hundred dollars for each bear or moose or each individual animal of any threatened or endangered species of wildlife not otherwise listed in this subsection;

(g) Five thousand dollars for each mountain lion, lynx, bobcat, river otter, or raw pelt thereof;

- (h) Twenty-five dollars for each raccoon, opossum, skunk, or raw pelt thereof;
- (i) Five thousand dollars for each eagle;
- (j) Five hundred dollars for each wild turkey;
- (k) Twenty-five dollars for each dove;
- (l) Seventy-five dollars for each other game bird, other game animal, other fur-bearing animal, raw pelt thereof, or nongame wildlife in need of conservation as designated by the commission pursuant to section 37-805, not otherwise listed in this subsection;
- (m) Fifty dollars for each wild bird not otherwise listed in this subsection;
- (n) Seven hundred fifty dollars for each swan or paddlefish;
- (o) Two hundred dollars for each master angler fish measuring more than twelve inches in length;
- (p) Fifty dollars for each game fish measuring more than twelve inches in length not otherwise listed in this subsection;
- (q) Twenty-five dollars for each other game fish; and
- (r) Fifty dollars for any other species of game not otherwise listed in this subsection.

(2) The commission shall adopt and promulgate rules and regulations to provide for a list of master angler fish which are subject to this section and to prescribe guidelines for measurements and point determinations as required by this section. The commission may adopt a scoring system which is uniformly recognized for this purpose.

(3) Such damages may be collected by the commission by civil action. In every case of conviction for any of such offenses, the court or magistrate before whom such conviction is obtained shall further enter judgment in favor of the State of Nebraska and against the defendant for liquidated damages in the amount set forth in this section and collect such damages by execution or otherwise. Failure to obtain conviction on a criminal charge shall not bar a separate civil action for such liquidated damages. Damages collected pursuant to this section shall be remitted to the secretary of the commission who shall remit them to the State Treasurer for credit to the State Game Fund.

Source: Laws 1929, c. 112, VI, § 14, p. 437; C.S.1929, § 37-614; R.S. 1943, § 37-614; Laws 1949, c. 105, § 1, p. 285; Laws 1957, c. 139, § 17, p. 472; Laws 1989, LB 34, § 43; Laws 1989, LB 43, § 1; R.S.1943, (1993), § 37-614; Laws 1998, LB 922, § 303; Laws 1999, LB 176, § 88; Laws 2001, LB 130, § 5; Laws 2009, LB105, § 34; Laws 2018, LB1008, § 1.

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.

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.

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.

ARTICLE 8

NONGAME AND ENDANGERED SPECIES CONSERVATION ACT

Section

37-806. Endangered or threatened species; how determined; commission; powers and duties; unlawful acts; exceptions; local law, regulation, or ordinance; effect.
 37-811. Wildlife Conservation Fund; created; use; investment.

37-806 Endangered or threatened species; how determined; commission; powers and duties; unlawful acts; exceptions; local law, regulation, or ordinance; effect.

(1) Any species of wildlife or wild plants determined to be an endangered species pursuant to the Endangered Species Act shall be an endangered species under the Nongame and Endangered Species Conservation Act, and any species of wildlife or wild plants determined to be a threatened species pursuant to the Endangered Species Act shall be a threatened species under the Nongame and Endangered Species Conservation Act. The commission may determine that any such threatened species is an endangered species throughout all or any portion of the range of such species within this state.

(2) In addition to the species determined to be endangered or threatened pursuant to the Endangered Species Act, the commission shall by regulation determine whether any species of wildlife or wild plants normally occurring within this state is an endangered or threatened species as a result of any of the following factors:

- (a) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (b) Overutilization for commercial, sporting, scientific, educational, or other purposes;
- (c) Disease or predation;
- (d) The inadequacy of existing regulatory mechanisms; or
- (e) Other natural or manmade factors affecting its continued existence within this state.

(3)(a) The commission shall make determinations required by subsection (2) of this section on the basis of the best scientific, commercial, and other data available to the commission.

(b) Except with respect to species of wildlife or wild plants determined to be endangered or threatened species under subsection (1) of this section, the commission may not add a species to nor remove a species from any list published pursuant to subsection (5) of this section unless the commission has first:

- (i) Provided public notice of such proposed action by publication in a newspaper of general circulation in each county in that portion of the subject species' range in which it is endangered or threatened or, if the subject species'

range extends over more than five counties, in a newspaper of statewide circulation distributed in the county;

(ii) Provided notice of such proposed action to and allowed comment from the Department of Agriculture, the Department of Environment and Energy, and the Department of Natural Resources;

(iii) Provided notice of such proposed action to and allowed comment from each natural resources district and public power district located in that portion of the subject species' range in which it is endangered or threatened;

(iv) Notified the Governor of any state sharing a common border with this state, in which the subject species is known to occur, that such action is being proposed;

(v) Allowed at least sixty days following publication for comment from the public and other interested parties;

(vi) Held at least one public hearing on such proposed action in each game and parks commissioner district of the subject species' range in which it is endangered or threatened;

(vii) Submitted the scientific, commercial, and other data which is the basis of the proposed action to scientists or experts outside and independent of the commission for peer review of the data and conclusions. If the commission submits the data to a state or federal fish and wildlife agency for peer review, the commission shall also submit the data to scientists or experts not affiliated with such an agency for review. For purposes of this section, state fish and wildlife agency does not include a postsecondary educational institution; and

(viii) For species proposed to be added under this subsection but not for species proposed to be removed under this subsection, developed an outline of the potential impacts, requirements, or regulations that may be placed on private landowners, or other persons who hold state-recognized property rights on behalf of themselves or others, as a result of the listing of the species or the development of a proposed program for the conservation of the species as required in subsection (1) of section 37-807.

The inadvertent failure to provide notice as required by subdivision (3)(b) of this section shall not prohibit the listing of a species and shall not be deemed to be a violation of the Administrative Procedure Act or the Nongame and Endangered Species Conservation Act.

(c) When the commission is proposing to add or remove a species under this subsection, public notice under subdivision (3)(b)(i) of this section shall include, but not be limited to, (i) the species proposed to be listed and a description of that portion of its range in which the species is endangered or threatened, (ii) a declaration that the commission submitted the data which is the basis for the listing for peer review and developed an outline if required under subdivision (b)(viii) of this subsection, and (iii) a declaration of the availability of the peer review, including an explanation of any changes or modifications the commission has made to its proposal as a result of the peer review, and the outline required under subdivision (b)(viii) of this subsection, if applicable, for public examination.

(d) In cases when the commission determines that an emergency situation exists involving the continued existence of such species as a viable component of the wild fauna or flora of the state, the commission may add species to such lists after having first published a public notice that such an emergency

situation exists together with a summary of facts which support such determination.

(4) In determining whether any species of wildlife or wild plants is an endangered or threatened species, the commission shall take into consideration those actions being carried out by the federal government, by other states, by other agencies of this state or political subdivisions thereof, or by any other person which may affect the species under consideration.

(5) The commission shall issue regulations containing a list of all species of wildlife and wild plants normally occurring within this state which it determines, in accordance with subsections (1) through (4) of this section, to be endangered or threatened species and a list of all such species. Each list shall refer to the species contained therein by scientific and common name or names, if any, and shall specify with respect to each such species over what portion of its range it is endangered or threatened.

(6) Except with respect to species of wildlife or wild plants determined to be endangered or threatened pursuant to the Endangered Species Act, the commission shall, upon the petition of an interested person, conduct a review of any listed or unlisted species proposed to be removed from or added to the lists published pursuant to subsection (5) of this section, but only if the commission publishes a public notice that such person has presented substantial evidence which warrants such a review.

(7) Whenever any species of wildlife or wild plants is listed as a threatened species pursuant to subsection (5) of this section, the commission shall issue such regulations as are necessary to provide for the conservation of such species. The commission may prohibit, with respect to any threatened species of wildlife or wild plants, any act prohibited under subsection (8) or (9) of this section.

(8) With respect to any endangered species of wildlife, it shall be unlawful, except as provided in subsection (7) of this section, for any person subject to the jurisdiction of this state to:

- (a) Export any such species from this state;
- (b) Take any such species within this state;
- (c) Possess, process, sell or offer for sale, deliver, carry, transport, or ship, by any means whatsoever except as a common or contract motor carrier under the jurisdiction of the Public Service Commission or the Interstate Commerce Commission, any such species; or
- (d) Violate any regulation pertaining to the conservation of such species or to any threatened species of wildlife listed pursuant to this section and promulgated by the commission pursuant to the Nongame and Endangered Species Conservation Act.

(9) With respect to any endangered species of wild plants, it shall be unlawful, except as provided in subsection (7) of this section, for any person subject to the jurisdiction of this state to:

- (a) Export any such species from this state;
- (b) Possess, process, sell or offer for sale, deliver, carry, transport, or ship, by any means whatsoever, any such species; or

(c) Violate any regulation pertaining to such species or to any threatened species of wild plants listed pursuant to this section and promulgated by the commission pursuant to the act.

(10) Any endangered species of wildlife or wild plants which enters this state from another state or from a point outside the territorial limits of the United States and which is being transported to a point within or beyond this state may be so entered and transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(11) The commission may permit any act otherwise prohibited by subsection (8) of this section for scientific purposes or to enhance the propagation or survival of the affected species.

(12) Any law, regulation, or ordinance of any political subdivision of this state which applies with respect to the taking, importation, exportation, possession, sale or offer for sale, processing, delivery, carrying, transportation other than under the jurisdiction of the Public Service Commission, or shipment of species determined to be endangered or threatened species pursuant to the Nongame and Endangered Species Conservation Act shall be void to the extent that it may effectively (a) permit that which is prohibited by the act or by any regulation which implements the act or (b) prohibit that which is authorized pursuant to an exemption or permit provided for in the act or in any regulation which implements the act. The Nongame and Endangered Species Conservation Act shall not otherwise be construed to void any law, regulation, or ordinance of any political subdivision of this state which is intended to conserve wildlife or wild plants.

Source: Laws 1975, LB 145, § 5; R.S.1943, (1993), § 37-434; Laws 1998, LB 922, § 356; Laws 2002, LB 1003, § 33; Laws 2019, LB302, § 19.

Cross References

Administrative Procedure Act, see section 84-920.

37-811 Wildlife Conservation Fund; created; use; investment.

There is hereby created the Wildlife Conservation Fund. The fund shall be used to assist in carrying out the Nongame and Endangered Species Conservation Act, to pay for research into and management of the ecological effects of the release, importation, commercial exploitation, and exportation of wildlife species pursuant to section 37-548, and to pay any expenses incurred by the Department of Revenue or any other agency in the administration of the income tax designation program required by section 77-27,119.01. The fund shall consist of money credited pursuant to section 60-3,238 and any other money as determined by the Legislature. The fund shall also consist of money transferred from the General Fund by the State Treasurer in an amount to be determined by the Tax Commissioner which shall be equal to the total amount of contributions designated pursuant to section 77-27,119.01. Any money in the Wildlife Conservation Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1984, LB 466, § 7; Laws 1989, LB 258, § 2; Laws 1994, LB 1066, § 23; R.S.Supp.,1996, § 37-439; Laws 1998, LB 922, § 361; Laws 1999, LB 176, § 98; Laws 2007, LB299, § 18; Laws 2019, LB356, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 12

STATE BOAT ACT

Section

- 37-1201. Act, how cited; declaration of policy.
- 37-1214. Motorboat; registration; period valid; application; registration fee; aquatic invasive species stamp.
- 37-1215. Motorboat; registration period already commenced; registration fee reduced; computation.
- 37-1219. Registration fees; remitted to commission; when; form; duplicate copy.
- 37-1278. Certificate of title; application; contents; issuance; transfer of motorboat.
- 37-1279. Certificate of title; issuance; form; county treasurer; duties; filing.
- 37-1280. Department of Motor Vehicles; powers and duties; rules and regulations; cancellation of certificate of title; removal of improperly noted lien on certificate of title; procedure.
- 37-1283. New certificate; when issued; proof required; processing of application.
- 37-1285. Certificate; surrender and cancellation; when required.
- 37-1285.01. Electronic certificate of title; changes authorized.
- 37-1287. Fees; disposition.
- 37-1292. Salvage certificate of title; terms, defined.
- 37-1293. Salvage branded certificate of title; when issued; procedure.

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.

37-1214 Motorboat; registration; period valid; application; registration fee; aquatic invasive species stamp.

(1) Except as otherwise provided in section 37-1211, the owner of each motorboat shall register such vessel or renew the registration every three years as provided in section 37-1226. The owner of such vessel shall file an initial application for a certificate of number pursuant to section 37-1216 with a county treasurer on forms approved and provided by the commission. The application shall be signed by the owner of the vessel, shall contain the year manufactured, and shall be accompanied by a registration fee for the three-year period of twenty-eight dollars for Class 1 boats, fifty-one dollars for Class 2 boats, seventy-two dollars and fifty cents for Class 3 boats, and one hundred twenty dollars for Class 4 boats. Of each motorboat registration fee, not more than ten dollars may be used for the Aquatic Invasive Species Program.

(2) The owner of a motorboat not registered in Nebraska shall purchase an aquatic invasive species stamp for the Aquatic Invasive Species Program valid for one calendar year prior to launching into any waters of the state. The cost of such one-year stamp shall be established pursuant to section 37-327 and be not less than ten dollars and not more than fifteen dollars plus an issuance fee pursuant to section 37-406. Such one-year stamp may be purchased electroni-

cally or through any vendor authorized by the commission to sell other permits and stamps issued under the Game Law pursuant to section 37-406. The aquatic invasive species stamp shall be permanently affixed on the starboard and rearward side of the vessel. The proceeds from the sale of stamps shall be remitted to the State Game Fund.

(3) This subsection applies beginning on an implementation date designated by the Director of Motor Vehicles in cooperation with the commission. The director shall designate an implementation date on or before January 1, 2021, for motorboat registration. In addition to the information required under subsection (1) of this section, the application for registration shall contain (a)(i) the full legal name as defined in section 60-468.01 of each owner or (ii) the name of each owner as such name appears on the owner's motor vehicle operator's license or state identification card and (b)(i) 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 (ii) if any owner is a business entity, a nonprofit organization, an estate, a trust, or a church-controlled organization, its tax identification number.

Source: Laws 1978, LB 21, § 14; Laws 1993, LB 235, § 36; Laws 1994, LB 123, § 1; Laws 1995, LB 376, § 2; Laws 1996, LB 464, § 2; Laws 1997, LB 720, § 1; Laws 1998, LB 922, § 396; Laws 1999, LB 176, § 111; Laws 2003, LB 305, § 20; Laws 2003, LB 306, § 21; Laws 2012, LB801, § 6; Laws 2015, LB142, § 3; Laws 2015, LB642, § 1; Laws 2019, LB270, § 1; Laws 2020, LB287, § 16.

Effective date November 14, 2020.

Cross References

Game Law, see section 37-201.

37-1215 Motorboat; registration period already commenced; registration fee reduced; computation.

In the event an application is made after the beginning of any registration period for registration of any vessel not previously registered by the applicant in this state, the registration fee on such vessel shall be reduced by one thirty-sixth for each full month of the registration period already expired as of the date such vessel was acquired. The county treasurer shall compute the registration fee on forms and pursuant to rules of the commission.

Source: Laws 1978, LB 21, § 15; Laws 1996, LB 464, § 3; Laws 2012, LB801, § 7; Laws 2015, LB142, § 4; Laws 2020, LB287, § 17.

Effective date November 14, 2020.

37-1219 Registration fees; remitted to commission; when; form; duplicate copy.

All registration fees received by the county treasurers shall be remitted on or before the thirtieth day of the following month to the secretary of the commission. All remittances shall be upon a form to be furnished by the commission and a duplicate copy shall be retained by the county treasurer.

Source: Laws 1978, LB 21, § 19; Laws 1996, LB 464, § 7; Laws 2012, LB801, § 11; Laws 2015, LB142, § 5; Laws 2020, LB287, § 18.

Effective date November 14, 2020.

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, 2021. In addition to the information required under subdivision (2)(a) of this section, the application for a certificate of title shall contain (i)(A) the full legal name as defined in section 60-468.01 of each owner or (B) the name of each owner as such name appears on the owner's motor vehicle operator's license or state identification card 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)(a) 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 a married couple, 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.

(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, 2021. If the purchaser of a motorboat does not apply for a certificate of title in accordance with subdivision (4)(a) of this section within thirty days after the sale of the motorboat, the seller of such motorboat may request the department to update the electronic certificate of title record to reflect the sale. The department shall update such record upon receiving evidence of a sale satisfactory to the director.

(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; Laws 2019, LB111, § 1; Laws 2019, LB270, § 2.

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.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1280 Department of Motor Vehicles; powers and duties; rules and regulations; cancellation of certificate of title; removal of improperly noted lien on certificate of title; procedure.

(1) The Department of Motor Vehicles may adopt and promulgate rules and regulations necessary to carry out sections 37-1275 to 37-1290. The county treasurers shall conform to any such rules and regulations and act at the direction of the department. The department shall also provide the county treasurers with the necessary training for the proper administration of such sections. The department shall receive and file in its office all instruments forwarded to it by the county treasurers under such sections and shall maintain indices covering the entire state for the instruments so filed. These indices shall be by hull identification number and alphabetically by the owner's name and shall be for the entire state and not for individual counties. The department shall provide and furnish the forms required by section 37-1286 to the county treasurers except manufacturers' or importers' certificates. The department shall check with its records all duplicate certificates of title received from the county treasurers. If it appears that a certificate of title has been improperly issued, the department shall cancel the certificate of title. Upon cancellation of any certificate of title, the department shall notify the county treasurer who issued the certificate, and the county treasurer shall enter the cancellation upon his or her records. The department shall also notify the person to whom such certificate of title was issued and any lienholders appearing on the certificate of the cancellation and shall demand the surrender of the certificate of title, but the cancellation shall not affect the validity of any lien noted on the certificate. The holder of the certificate of title shall return the certificate to the department immediately. If a certificate of number has been issued pursuant to section 37-1216 to the holder of a certificate of title so canceled, the department shall notify the commission. Upon receiving the notice, the commission shall immediately cancel the certificate of number and demand the return of the certificate of number and the holder of the certificate of number shall return the certificate to the commission immediately.

(2) The department may remove a lien on a certificate of title when such lien was improperly noted if evidence of the improperly noted lien is submitted to the department and the department finds the evidence sufficient to support removal of the lien. The department shall send notification prior to removal of the lien to the last-known address of the lienholder. The lienholder must respond within thirty days after the date on the notice and provide sufficient evidence to support that the lien should not be removed. If the lienholder fails to respond to the notice, the lien may be removed by the department.

Source: Laws 1994, LB 123, § 8; Laws 1996, LB 464, § 17; Laws 2012, LB801, § 17; Laws 2018, LB909, § 2; Laws 2019, LB270, § 3.

37-1283 New certificate; when issued; proof required; processing of application.

(1)(a) This subsection applies prior to the implementation date designated by the Director of Motor Vehicles pursuant to subsection (2) of section 60-1508.

(b)(i) Whenever ownership of a motorboat is transferred by operation of law as upon inheritance, devise, bequest, order in bankruptcy, insolvency, replevin, or execution sale, (ii) whenever a motorboat is sold to satisfy storage or repair charges or under section 76-1607, or (iii) whenever repossession is had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract, or other like agreement, the county 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.

(2)(a) This subsection applies beginning on the implementation date designated by the director pursuant to subsection (2) of section 60-1508.

(b)(i) Whenever ownership of a motorboat is transferred by operation of law as upon inheritance, devise, bequest, order in bankruptcy, insolvency, replevin, or execution sale, (ii) whenever a motorboat is sold to satisfy storage or repair charges or under section 76-1607, or (iii) 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.

(3) 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.

(4) 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 a court order or an 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; Laws 2018, LB193, § 75; Laws 2018, LB909, § 3.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1285 Certificate; surrender and cancellation; when required.

Each owner of a motorboat and each person mentioned as owner in the last certificate of title, when the motorboat is dismantled, destroyed, or changed in such a manner that it loses its character as a motorboat or changed in such a manner that it is not the motorboat described in the certificate of title, shall surrender his or her certificate of title to any county treasurer or to the Department of Motor Vehicles. If the certificate of title is surrendered to a county treasurer, he or she shall, with the consent of any holders of any liens noted on the certificate, enter a cancellation upon the records and shall notify the department of the cancellation. Beginning on the implementation date designated by the Director of Motor Vehicles pursuant to subsection (3) of section 60-1508, a wrecker or salvage dealer shall report electronically to the department using the electronic reporting system. If the certificate is surrendered to the department, it shall, with the consent of any holder of any lien noted on the certificate, enter a cancellation upon its records. Upon cancellation of a certificate of title in the manner prescribed by this section, the county treasurer and the department may cancel and destroy all certificates and all memorandum certificates in that chain of title.

Source: Laws 1994, LB 123, § 13; Laws 1996, LB 464, § 21; Laws 2012, LB751, § 4; Laws 2012, LB801, § 21; Laws 2018, LB909, § 4.

37-1285.01 Electronic certificate of title; changes authorized.

Beginning on the implementation date designated by the Director of Motor Vehicles pursuant to subsection (2) of section 60-1508, 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; Laws 2018, LB909, § 5.

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.

37-1292 Salvage certificate of title; terms, defined.

For purposes of this section and sections 37-1293 to 37-1298:

(1) Cost of repairs means the estimated or actual retail cost of parts needed to repair a motorboat plus the cost of labor computed by using the hourly labor rate and time allocations for repair that are customary and reasonable. Retail cost of parts and labor rates may be based upon collision estimating manuals or electronic computer estimating systems customarily used in the insurance industry;

(2) Late model motorboat means a motorboat which has (a) a manufacturer's model year designation of, or later than, the year in which the motorboat was wrecked, damaged, or destroyed, or any of the six preceding years, or (b) a retail value of more than ten thousand dollars until January 1, 2006, a retail value of more than ten thousand five hundred dollars until January 1, 2010, and a retail value of more than ten thousand five hundred dollars increased by five hundred dollars every five years thereafter;

(3) Previously salvaged means the designation of a rebuilt motorboat which was previously required to be issued a salvage branded certificate of title;

(4) Retail value means the actual cash value, fair market value, or retail value of a motorboat as (a) set forth in a current edition of any nationally recognized compilation, including automated data bases, of retail values or (b) determined pursuant to a market survey of comparable motorboats with respect to condition and equipment; and

(5) Salvage means the designation of a motorboat which is:

(a) A late model motorboat which has been wrecked, damaged, or destroyed to the extent that the estimated total cost of repair to rebuild or reconstruct the motorboat to its condition immediately before it was wrecked, damaged, or destroyed and to restore the motorboat to a condition for legal operation, meets

or exceeds seventy-five percent of the retail value of the motorboat at the time it was wrecked, damaged, or destroyed; or

(b) Voluntarily designated by the owner of the motorboat as a salvage motorboat by obtaining a salvage branded certificate of title, without respect to the damage to, age of, or value of the motorboat.

Source: Laws 2004, LB 560, § 5; Laws 2019, LB270, § 4.

37-1293 Salvage branded certificate of title; when issued; procedure.

When an insurance company acquires a salvage motorboat through payment of a total loss settlement on account of damage, the company shall obtain the certificate of title from the owner, surrender such certificate of title to the county treasurer, and make application for a salvage branded certificate of title which shall be assigned when the company transfers ownership. An insurer shall take title to a salvage motorboat for which a total loss settlement is made unless the owner of the motorboat elects to retain the motorboat. If the owner elects to retain the motorboat, the insurance company shall notify the Department of Motor Vehicles of such fact in a format prescribed by the department. Beginning on the implementation date designated by the Director of Motor Vehicles pursuant to subsection (3) of section 60-1508, the insurance company shall report electronically to the department using the electronic reporting system. The department shall immediately enter the salvage brand onto the computerized record of the motorboat. The insurance company shall also notify the owner of the owner's responsibility to comply with this section. The owner shall, within thirty days after the settlement of the loss, forward the properly endorsed acceptable certificate of title to the county treasurer. Upon receipt of the certificate of title, the county treasurer shall issue a salvage branded certificate of title for the motorboat unless the motorboat has been rebuilt or reconstructed, in which case the county treasurer shall issue a previously salvaged branded certificate of title for the motorboat.

Source: Laws 2004, LB 560, § 6; Laws 2012, LB801, § 26; Laws 2018, LB909, § 6; Laws 2019, LB270, § 5.

ARTICLE 14

NEBRASKA INVASIVE SPECIES COUNCIL

Section

37-1402. Invasive species, defined.

37-1402 Invasive species, defined.

For purposes of sections 37-1401 to 37-1406, invasive species means aquatic or terrestrial organisms not native to the region that cause economic or biological harm and are capable of spreading to new areas, and invasive species does not include livestock as defined in sections 54-1902 and 54-2921, honey bees, domestic pets, intentionally planted agronomic crops, or nonnative organisms that do not cause economic or biological harm.

Source: Laws 2012, LB391, § 12; Laws 2020, LB344, § 63.
Effective date November 14, 2020.

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.

Cross References

Game Law, see section 37-201.

ARTICLE 17

STATE PARK SYSTEM CONSTRUCTION ALTERNATIVES ACT

Section

- 37-1701. Act, how cited.
- 37-1702. Definitions, where found.
- 37-1703. Alternative technical concept, defined.
- 37-1704. Best value-based selection process, defined.
- 37-1705. Commission, defined.
- 37-1706. Construction manager, defined.
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§ 37-1701

GAME AND PARKS

Section

- 37-1724. Stipend.
- 37-1725. Alternative technical concepts; evaluation of proposals; commission; power to negotiate.
- 37-1726. Process for selection of construction manager and entering into construction manager-general contractor contract.
- 37-1727. Construction manager-general contractor contract; request for proposals; contents.
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- 37-1729. Commission; duties; powers.
- 37-1730. Contract changes authorized.
- 37-1731. Insurance requirements.
- 37-1732. Rules and regulations.

37-1701 Act, how cited.

Sections 37-1701 to 37-1732 shall be known and may be cited as the State Park System Construction Alternatives Act.

Source: Laws 2018, LB775, § 2.

37-1702 Definitions, where found.

For purposes of the State Park System Construction Alternatives Act, unless the context otherwise requires, the definitions found in sections 37-1703 to 37-1716 are used.

Source: Laws 2018, LB775, § 3.

37-1703 Alternative technical concept, defined.

Alternative technical concept means changes suggested by a qualified, eligible, short-listed design-builder to the commission's basic configurations, project scope, design, or construction criteria.

Source: Laws 2018, LB775, § 4.

37-1704 Best value-based selection process, defined.

Best value-based selection process means a process of selecting a design-builder using price, schedule, and qualifications for evaluation factors.

Source: Laws 2018, LB775, § 5.

37-1705 Commission, defined.

Commission means the Game and Parks Commission.

Source: Laws 2018, LB775, § 6.

37-1706 Construction manager, defined.

Construction manager means the legal entity which proposes to enter into a construction manager-general contractor contract pursuant to the State Park System Construction Alternatives Act.

Source: Laws 2018, LB775, § 7.

37-1707 Construction manager-general contractor contract, defined.

Construction manager-general contractor contract means a contract which is subject to a qualification-based selection process between the commission 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 commission, construction services for the construction phase of the project.

Source: Laws 2018, LB775, § 8.

37-1708 Construction services, defined.

Construction services means activities associated with building the project.

Source: Laws 2018, LB775, § 9.

37-1709 Design-build contract, defined.

Design-build contract means a contract between the commission and a design-builder which is subject to a best value-based selection process to furnish (1) architectural, engineering, and related design services and (2) labor, materials, supplies, equipment, and construction services.

Source: Laws 2018, LB775, § 10.

37-1710 Design-builder, defined.

Design-builder means the legal entity which proposes to enter into a design-build contract.

Source: Laws 2018, LB775, § 11.

37-1711 Preconstruction services, defined.

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.

Source: Laws 2018, LB775, § 12.

37-1712 Project performance criteria, defined.

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.

Source: Laws 2018, LB775, § 13.

37-1713 Proposal, defined.

Proposal means an offer in response to a request for proposals (1) by a design-builder to enter into a design-build contract or (2) by a construction manager to enter into a construction manager-general contractor contract.

Source: Laws 2018, LB775, § 14.

37-1714 Qualification-based selection process, defined.

Qualification-based selection process means a process of selecting a construction manager based on qualifications.

Source: Laws 2018, LB775, § 15.

37-1715 Request for proposals, defined.

Request for proposals means the documentation by which the commission solicits proposals.

Source: Laws 2018, LB775, § 16.

37-1716 Request for qualifications, defined.

Request for qualifications means the documentation or publication by which the commission solicits qualifications.

Source: Laws 2018, LB775, § 17.

37-1717 Purpose.

The purpose of the State Park System Construction Alternatives Act is to provide the commission alternative methods of contracting for public projects for buildings in the state park system. The alternative methods of contracting shall be available to the commission for use on any project regardless of the funding source. Notwithstanding any other provision of state law to the contrary, the State Park System Construction Alternatives Act shall govern the design-build and construction manager-general contractor procurement process for the commission.

Source: Laws 2018, LB775, § 18.

37-1718 Contracts authorized.

The commission, in accordance with the State Park System Construction Alternatives Act, may solicit and execute a design-build contract or a construction manager-general contractor contract for a public project in the state park system.

Source: Laws 2018, LB775, § 19.

37-1719 Architect; engineer; hiring authorized.

The commission may hire an architect licensed pursuant to the Engineers and Architects Regulation Act or an engineer licensed pursuant to the act to assist the commission with the development of project performance criteria and requests for proposals, with evaluation of proposals, with evaluation of the construction to determine adherence to the project performance criteria, and with any additional services requested by the commission to represent its interests in relation to a project. The procedures used to hire such person or organization shall comply with the Nebraska Consultants' Competitive Negotiation Act. The person or organization hired shall be ineligible to be included as a provider of other services in a proposal for the project for which he or she has been hired and shall not be employed by or have a financial or other interest in a design-builder or construction manager who will submit a proposal.

Source: Laws 2018, LB775, § 20.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.
Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

37-1720 Guidelines for entering into contracts.

The commission shall adopt guidelines for entering into a design-build contract or construction manager-general contractor contract. The guidelines shall include the following:

- (1) Preparation and content of requests for qualifications;
- (2) Preparation and content of requests for proposals;
- (3) Qualification and short-listing of design-builders and construction managers. The guidelines shall provide that the commission will evaluate prospective design-builders and construction managers based on the information submitted to the commission in response to a request for qualifications and will select a short list of design-builders or construction managers who shall be considered qualified and eligible to respond to the request for proposals;
- (4) Preparation and submittal of proposals;
- (5) Procedures and standards for evaluating proposals;
- (6) Procedures for negotiations between the commission and the design-builders or construction managers submitting proposals prior to the acceptance of a proposal if any such negotiations are contemplated; and
- (7) Procedures for the evaluation of construction under a design-build contract to determine adherence to the project performance criteria.

Source: Laws 2018, LB775, § 21.

37-1721 Process for selecting design-builder and entering into contract.

The process for selecting a design-builder and entering into a design-build contract shall be in accordance with sections 37-1722 to 37-1725.

Source: Laws 2018, LB775, § 22.

37-1722 Request for qualifications; prequalify design-builders; publication in newspaper; short list.

(1) The commission shall prepare a request for qualifications for design-build proposals and shall prequalify design-builders. The request for qualifications shall describe the project in sufficient detail to permit a design-builder to respond. The request for qualifications shall identify the maximum number of design-builders the commission will place on a short list as qualified and eligible to receive a request for proposals.

(2) A person or organization hired by the commission under section 37-1719 shall be ineligible to compete for a design-build contract on the same project for which the person or organization was hired.

(3) The request for qualifications shall be (a) published in a newspaper of statewide circulation at least thirty days prior to the deadline for receiving the request for qualifications and (b) sent by first-class mail to any design-builder upon request.

(4) The commission shall create a short list of qualified and eligible design-builders in accordance with the guidelines adopted pursuant to section 37-1720. The commission shall select at least two prospective design-builders,

except that if only one design-builder has responded to the request for qualifications, the commission may, in its discretion, proceed or cancel the procurement. The request for proposals shall be sent only to the design-builders placed on the short list.

Source: Laws 2018, LB775, § 23.

37-1723 Design-build contract; request for proposals; contents.

The commission shall prepare a request for proposals for each design-build contract. The request for proposals shall contain, at a minimum, the following elements:

(1) The guidelines adopted by the commission in accordance with section 37-1720. The identification of a publicly accessible location of the guidelines, either physical or electronic, shall be considered compliance with this subdivision;

(2) The proposed terms and conditions of the design-build contract, including any terms and conditions which are subject to further negotiation;

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

(4) A statement regarding alternative technical concepts including the process and time period in which such concepts may be submitted, confidentiality of the concepts, and ownership of the rights to the intellectual property contained in such concepts;

(5) Project performance criteria;

(6) Budget parameters for the project;

(7) Any bonding and insurance required by law or as may be additionally required by the commission;

(8) The criteria for evaluation of proposals and the relative weight of each criterion. The criteria shall include, but are not limited to, the cost of the work, construction experience, design experience, and the financial, personnel, and equipment resources available for the project. The relative weight to apply to any criterion shall be at the discretion of the commission based on each project, except that in all cases, the cost of the work shall be given a relative weight of at least fifty percent;

(9) A requirement that the design-builder provide a written statement of the design-builder's proposed approach to the design and construction of the project, which may include graphic materials illustrating the proposed approach to design and construction and shall include price proposals;

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

(a) At the time of the design-build proposal, the design-builder must furnish to the commission a written statement identifying the architect or engineer who will perform the architectural or engineering work for the project. The architect or engineer engaged by the design-builder to perform the architectural or engineering work with respect to the project must have direct supervision of such work and may not be removed by the design-builder prior to the completion of the project without the written consent of the commission;

(b) At the time of the design-build proposal, the design-builder must furnish to the commission a written statement identifying the general contractor who will provide the labor, material, supplies, equipment, and construction services.

The general contractor identified by the design-builder may not be removed by the design-builder prior to completion of the project without the written consent of the commission;

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

(d) The rendering of architectural or engineering services by a licensed architect or engineer employed by the design-builder must conform to the Engineers and Architects Regulation Act; and

(11) Other information or requirements which the commission, in its discretion, chooses to include in the request for proposals.

Source: Laws 2018, LB775, § 24.

Cross References

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

37-1724 Stipend.

The commission shall pay a stipend to qualified design-builders that submit responsive proposals but are not selected. Payment of the stipend shall give the commission ownership of the intellectual property contained in the proposals and alternative technical concepts. The amount of the stipend shall be at the discretion of the commission. The refusal to pay or accept the stipend shall leave the intellectual property contained in the proposals and alternative technical concepts in the possession of the creator of the proposals and alternative technical concepts.

Source: Laws 2018, LB775, § 25.

37-1725 Alternative technical concepts; evaluation of proposals; commission; power to negotiate.

(1) Design-builders shall submit proposals as required by the request for proposals. The commission may meet with individual design-builders prior to the time of submitting the proposal and may have discussions concerning alternative technical concepts. If an alternative technical concept provides a solution that is equal to or better than the requirements in the request for proposals and the alternative technical concept is acceptable to the commission, it may be incorporated as part of the proposal by the design-builder. Notwithstanding any other provision of state law to the contrary, alternative technical concepts shall be confidential and not disclosed to other design-builders or members of the public from the time the proposals are submitted until such proposals are opened by the commission.

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

(3) Proposals may be withdrawn at any time prior to the opening of such proposals in which case no stipend shall be paid. The commission shall have the right to reject any and all proposals at no cost to the commission other than any stipend for design-builders who have submitted responsive proposals. The

commission may thereafter solicit new proposals using the same or different project performance criteria or may cancel the design-build solicitation.

(4) The commission shall rank the design-builders in order of best value pursuant to the criteria in the request for proposals. The commission may meet with design-builders prior to ranking.

(5) The commission may attempt to negotiate a design-build contract with the highest ranked design-builder selected by the commission and may enter into a design-build contract after negotiations. If the commission is unable to negotiate a satisfactory design-build contract with the highest ranked design-builder, the commission may terminate negotiations with that design-builder. The commission may then undertake negotiations with the second highest ranked design-builder and may enter into a design-build contract after negotiations. If the commission is unable to negotiate a satisfactory contract with the second highest ranked design-builder, the commission may undertake negotiations with the third highest ranked design-builder, if any, and may enter into a design-build contract after negotiations.

(6) If the commission is unable to negotiate a satisfactory contract with any of the ranked design-builders, the commission may either revise the request for proposals and solicit new proposals or cancel the design-build process under the State Park System Construction Alternatives Act.

Source: Laws 2018, LB775, § 26.

37-1726 Process for selection of construction manager and entering into construction manager-general contractor contract.

(1) The process for selecting a construction manager and entering into a construction manager-general contractor contract shall be in accordance with this section and sections 37-1727 to 37-1729.

(2) The commission shall prepare a request for qualifications for construction manager-general contractor contract proposals and shall prequalify construction managers. The request for qualifications shall describe the project in sufficient detail to permit a construction manager to respond. The request for qualifications shall identify the maximum number of eligible construction managers the commission will place on a short list as qualified and eligible to receive a request for proposals.

(3) The request for qualifications shall be (a) published in a newspaper of statewide circulation at least thirty days prior to the deadline for receiving the request for qualifications and (b) sent by first-class mail to any construction manager upon request.

(4) The commission shall create a short list of qualified and eligible construction managers in accordance with the guidelines adopted pursuant to section 37-1720. The commission shall select at least two construction managers, except that if only one construction manager has responded to the request for qualifications, the commission may, in its discretion, proceed or cancel the procurement. The request for proposals shall be sent only to the construction managers placed on the short list.

Source: Laws 2018, LB775, § 27.

37-1727 Construction manager-general contractor contract; request for proposals; contents.

The commission shall prepare a request for proposals for each construction manager-general contractor contract. The request for proposals shall contain, at a minimum, the following elements:

- (1) The guidelines adopted by the commission in accordance with section 37-1720. The identification of a publicly accessible location of the guidelines, either physical or electronic, shall be considered compliance with this subdivision;
- (2) The proposed terms and conditions of the contract, including any terms and conditions which are subject to further negotiation;
- (3) Any bonding and insurance required by law or as may be additionally required by the commission;
- (4) General information about the project which will assist the commission in its selection of the construction manager, including a project statement which contains information about the scope and nature of the project, the project site, the schedule, and the estimated budget;
- (5) The criteria for evaluation of proposals and the relative weight of each criterion;
- (6) A statement that the construction manager shall not be allowed to sublet, assign, or otherwise dispose of any portion of the contract without consent of the commission. In no case shall the commission allow the construction manager to sublet more than seventy percent of the work, excluding specialty items; and
- (7) Other information or requirements which the commission, in its discretion, chooses to include in the request for proposals.

Source: Laws 2018, LB775, § 28.

37-1728 Submission of proposals; procedure; evaluation of proposals; commission; power to negotiate.

- (1) Construction managers shall submit proposals as required by the request for proposals.
- (2) Proposals shall be sealed and shall not be opened until expiration of the time established for making the proposals as set forth in the request for proposals.
- (3) Proposals may be withdrawn at any time prior to signing a contract for preconstruction services. The commission shall have the right to reject any and all proposals at no cost to the commission. The commission may thereafter solicit new proposals or may cancel the construction manager-general contractor procurement process.
- (4) The commission shall rank the construction managers in accordance with the qualification-based selection process and pursuant to the criteria in the request for proposals. The commission may meet with construction managers prior to the ranking.
- (5) The commission may attempt to negotiate a contract for preconstruction services with the highest ranked construction manager and may enter into a contract for preconstruction services after negotiations. If the commission is unable to negotiate a satisfactory contract for preconstruction services with the highest ranked construction manager, the commission may terminate negotiations with that construction manager. The commission may then undertake

negotiations with the second highest ranked construction manager and may enter into a contract for preconstruction services after negotiations. If the commission is unable to negotiate a satisfactory contract with the second highest ranked construction manager, the commission may undertake negotiations with the third highest ranked construction manager, if any, and may enter into a contract for preconstruction services after negotiations.

(6) If the commission is unable to negotiate a satisfactory contract for preconstruction services with any of the ranked construction managers, the commission may either revise the request for proposals and solicit new proposals or cancel the construction manager-general contractor contract process under the State Park System Construction Alternatives Act.

Source: Laws 2018, LB775, § 29.

37-1729 Commission; duties; powers.

(1) Before the construction manager begins any construction services, the commission shall:

(a) Conduct an independent cost estimate for the project; and

(b) Conduct contract negotiations with the construction manager to develop a construction manager-general contractor contract for construction services.

(2) If the construction manager and the commission are unable to negotiate a contract, the commission may use other contract procurement processes as provided by law. Persons or organizations who submitted proposals but were unable to negotiate a contract with the commission shall be eligible to compete in the other contract procurement processes.

Source: Laws 2018, LB775, § 30.

37-1730 Contract changes authorized.

A design-build contract and a construction manager-general contractor contract may be conditioned upon later refinements in scope and price and may permit the commission in agreement with the design-builder or construction manager to make changes in the project without invalidating the contract.

Source: Laws 2018, LB775, § 31.

37-1731 Insurance requirements.

Nothing in the State Park System Construction Alternatives Act shall limit or reduce statutory or regulatory requirements regarding insurance.

Source: Laws 2018, LB775, § 32.

37-1732 Rules and regulations.

The commission may adopt and promulgate rules and regulations to carry out the State Park System Construction Alternatives Act.

Source: Laws 2018, LB775, § 33.

HEALTH OCCUPATIONS AND PROFESSIONS

CHAPTER 38

HEALTH OCCUPATIONS AND PROFESSIONS

Article.

1. Uniform Credentialing Act. 38-101 to 38-1,145.
2. Advanced Practice Registered Nurse Practice Act. 38-208.
3. Alcohol and Drug Counseling Practice Act. 38-319, 38-321.
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. 38-1001 to 38-10,172.
11. Dentistry Practice Act. 38-1101 to 38-1152.
12. Emergency Medical Services Practice Act. 38-1201 to 38-1237.
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. 38-1701 to 38-1725.
18. Medical Nutrition Therapy Practice Act. 38-1813, 38-1814.
19. Medical Radiography Practice Act. 38-1917, 38-1917.02.
20. Medicine and Surgery Practice Act. 38-2001 to 38-2063.
21. Mental Health Practice Act. 38-2104 to 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 to 38-2523.
26. Optometry Practice Act. 38-2609.
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28. Pharmacy Practice Act. 38-2801 to 38-28,116.
29. Physical Therapy Practice Act. 38-2924.
30. Podiatry Practice Act. 38-3001 to 38-3014.
31. Psychology Practice Act. 38-3101 to 38-3133.
32. Respiratory Care Practice Act. 38-3208, 38-3212.
33. Veterinary Medicine and Surgery Practice Act. 38-3301 to 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.
38. EMS Personnel Licensure Interstate Compact. 38-3801.
39. Psychology Interjurisdictional Compact. 38-3901.
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ARTICLE 1

UNIFORM CREDENTIALING ACT

Section

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§ 38-101**HEALTH OCCUPATIONS AND PROFESSIONS**

Section

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38-101 Act, how cited.

Sections 38-101 to 38-1,145 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 38-1,145 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; Laws 2018, LB701, § 1; Laws 2019, LB29, § 1; Laws 2019, LB112, § 1; Laws 2019, LB556, § 1.

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 38-3701.
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 38-120.03 apply.

Source: Laws 2007, LB463, § 5; Laws 2017, LB88, § 29; Laws 2018, LB701, § 2; Laws 2019, LB112, § 2.

38-117.01 Low-income individual, defined.

Low-income individual means an individual enrolled in a state or federal public assistance program, including, but not limited to, the medical assistance program established pursuant to the Medical Assistance Act, the federal Supplemental Nutrition Assistance Program, or the federal Temporary Assistance for Needy Families program, or whose household adjusted gross income is below one hundred thirty percent of the federal income poverty guideline or a higher threshold to be set by the Licensure Unit of the Division of Public Health of the Department of Health and Human Services.

Source: Laws 2019, LB112, § 3.

Cross References

Medical Assistance Act, see section 68-901.

38-117.02 Military families, defined.

Military families means active duty service members in the armed services of the United States, military spouses, honorably discharged veterans of the armed services of the United States, spouses of such honorably discharged veterans, and unremarried surviving spouses of deceased service members of the armed services of the United States.

Source: Laws 2019, LB112, § 4.

38-118.01 Military spouse, defined.

Military spouse means the spouse of an active duty service member in the armed forces of the United States.

Source: Laws 2017, LB88, § 30; Laws 2019, LB112, § 5.

38-120.01 Telehealth, defined.

Telehealth means the use of medical information electronically exchanged from one site to another, whether synchronously or asynchronously, to aid a credential holder in the diagnosis or treatment of a patient. Telehealth includes services originating from a patient's home or any other location where such patient is located, asynchronous services involving the acquisition and storage of medical information at one site that is then forwarded to or retrieved by a credential holder at another site for medical evaluation, and telemonitoring.

Source: Laws 2018, LB701, § 3.

38-120.02 Telemonitoring, defined.

Telemonitoring means the remote monitoring of a patient's vital signs, biometric data, or subjective data by a monitoring device which transmits such data electronically to a credential holder for analysis and storage.

Source: Laws 2018, LB701, § 4.

38-120.03 Young worker, defined.

Young worker means (1) for an initial credential under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, except for a body art license, an applicant who is between the ages of seventeen and twenty-five years or (2) for an initial credential issued under any other provision of the Uniform Credentialing Act, including a body art license, an applicant who is between the ages of eighteen and twenty-five years.

Source: Laws 2019, LB112, § 6.

Cross References

Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, see section 38-1001.

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.

38-122 Credential; form.

Every initial credential to practice a profession or engage in a business shall be in the form of a document under the name of the department.

Source: Laws 1927, c. 167, § 5, p. 455; C.S.1929, § 71-204; R.S.1943, § 71-105; Laws 1994, LB 1210, § 12; Laws 1996, LB 1044, § 374; Laws 1999, LB 828, § 9; R.S.1943, (2003), § 71-105; Laws 2007, LB296, § 299; Laws 2007, LB463, § 22; Laws 2018, LB1034, § 4.

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.

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.

38-129 Issuance of credential; qualifications.

(1) No individual shall be issued a credential under the Uniform Credentialing Act until he or she has furnished satisfactory evidence to the department that he or she is of good character and has attained the age of nineteen years except as otherwise specifically provided by statute, rule, or regulation.

(2) A credential may only be issued to (a) a citizen of the United States, (b) an alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act, (c) a nonimmigrant lawfully present in the United States who is eligible for a credential under the Uniform Credentialing Act, or (d) a person who submits (i) an unexpired employment authorization

document issued by the United States Department of Homeland Security, Form I-766, and (ii) documentation issued by the United States Department of Homeland Security, the United States Citizenship and Immigration Services, or any other federal agency, such as one of the types of Form I-797 used by the United States Citizenship and Immigration Services, demonstrating that such person is described in section 202(c)(2)(B)(i) through (x) of the federal REAL ID Act of 2005, Public Law 109-13. Such credential shall be valid only for the period of time during which such person's employment authorization document is valid.

Source: Laws 1927, c. 167, § 3, p. 455; C.S.1929, § 71-202; R.S.1943, § 71-103; Laws 1969, c. 560, § 1, p. 2278; Laws 1974, LB 811, § 6; Laws 1986, LB 286, § 25; Laws 1986, LB 579, § 17; Laws 1986, LB 926, § 2; Laws 1994, LB 1210, § 10; R.S.1943, (2003), § 71-103; Laws 2007, LB463, § 29; Laws 2011, LB225, § 1; Laws 2016, LB947, § 3; Laws 2020, LB944, § 4.
Operative date November 14, 2020.

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; and

(d) A copy of his or her fingerprints for a criminal background check if required under section 38-131.

(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, and has submitted fingerprints for a criminal background check if required under section 38-131, the department shall issue a temporary credential to the applicant. The applicant shall not be required to pay any fees pursuant to the Uniform Credentialing Act for the temporary credential or the initial regular credential except the actual cost of the fingerprinting and criminal background check for an initial license under section 38-131.

(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; Laws 2019, LB112, § 7.

38-131 Criminal background check; when required.

(1) An applicant for an initial license to practice as a registered nurse, a licensed practical nurse, a physical therapist, a physical therapy assistant, a psychologist, an advanced emergency medical technician, an emergency medical technician, or a paramedic or to practice a profession which is authorized to prescribe controlled substances shall be subject to a criminal background check. A criminal background check may also be required for initial licensure or reinstatement of a license governed by the Uniform Credentialing Act if a criminal background check is required by an interstate licensure compact. Except as provided in subsection (3) of this section, the applicant shall submit with the application a full set of fingerprints which shall be forwarded to the Nebraska State Patrol to be submitted to the Federal Bureau of Investigation for a national criminal history record information check. The applicant shall authorize release of the results of the national criminal history record information check to the department. The applicant shall pay the actual cost of the fingerprinting and criminal background check.

(2) This section shall not apply to a dentist who is an applicant for a dental locum tenens under section 38-1122, to a physician or osteopathic physician who is an applicant for a physician locum tenens under section 38-2036, or to a veterinarian who is an applicant for a veterinarian locum tenens under section 38-3335.

(3) An applicant for a temporary educational permit as defined in section 38-2019 shall have ninety days from the issuance of the permit to comply with subsection (1) of this section and shall have his or her permit suspended after such ninety-day period if the criminal background check is not complete or revoked if the criminal background check reveals that the applicant was not qualified for the permit.

Source: Laws 2005, LB 306, § 2; Laws 2005, LB 382, § 15; Laws 2006, LB 833, § 1; R.S.Supp.,2006, § 71-104.01; Laws 2007, LB247, § 60; Laws 2007, LB463, § 31; Laws 2007, LB481, § 2; Laws 2011, LB687, § 1; Laws 2015, LB129, § 1; Laws 2018, LB731, § 1; Laws 2018, LB1034, § 5.

38-145 Continuing competency requirements; board; duties.

(1) The appropriate board shall establish continuing competency requirements for persons seeking renewal of a credential.

(2) The purposes of continuing competency requirements are to ensure (a) the maintenance by a credential holder of knowledge and skills necessary to competently practice his or her profession, (b) the utilization of new techniques based on scientific and clinical advances, and (c) the promotion of research to assure expansive and comprehensive services to the public.

(3) Each board shall consult with the department and the appropriate professional academies, professional societies, and professional associations in the development of such requirements.

(4)(a) For a profession for which there are no continuing education requirements on December 31, 2002, the requirements may include, but not be limited to, any one or a combination of the continuing competency activities listed in subsection (5) of this section.

(b) For a profession for which there are continuing education requirements on December 31, 2002, continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, any one or a combination of the continuing competency activities listed in subdivisions (5)(b) through (5)(p) of this section which a credential holder may select as an alternative to continuing education.

(5) Continuing competency activities may include, but not be limited to, any one or a combination of the following:

- (a) Continuing education;
- (b) Clinical privileging in an ambulatory surgical center or hospital as defined in section 71-405 or 71-419;
- (c) Board certification in a clinical specialty area;
- (d) Professional certification;
- (e) Self-assessment;
- (f) Peer review or evaluation;
- (g) Professional portfolio;
- (h) Practical demonstration;
- (i) Audit;
- (j) Exit interviews with consumers;
- (k) Outcome documentation;
- (l) Testing;
- (m) Refresher courses;
- (n) Inservice training;
- (o) Practice requirement; or
- (p) Any other similar modalities.

(6) Beginning with the first license renewal period which begins on or after October 1, 2018, the continuing competency requirements for a nurse midwife, dentist, physician, physician assistant, nurse practitioner, podiatrist, and veterinarian who prescribes controlled substances shall include at least three hours of continuing education biennially regarding prescribing opiates as defined in section 28-401. The continuing education may include, but is not limited to, education regarding prescribing and administering opiates, the risks and indicators regarding development of addiction to opiates, and emergency opiate situations. One-half hour of the three hours of continuing education shall cover the prescription drug monitoring program described in sections 71-2454 to 71-2456. This subsection terminates on January 1, 2029.

Source: Laws 1976, LB 877, § 14; Laws 1984, LB 481, § 21; Laws 1985, LB 250, § 4; Laws 1986, LB 286, § 62; Laws 1986, LB 579, § 54; Laws 1992, LB 1019, § 38; Laws 1994, LB 1210, § 41; Laws 1999, LB 828, § 47; Laws 2002, LB 1021, § 12; R.S.1943, (2003), § 71-161.09; Laws 2007, LB463, § 45; Laws 2018, LB731, § 2.

38-151 Credentialing system; administrative costs; how paid; patient safety fee.

(1) It is the intent of the Legislature that the revenue to cover the cost of the credentialing system administered by the department is to be derived from General Funds, cash funds, federal funds, gifts, grants, or fees from individuals or businesses seeking credentials except as otherwise provided in section 38-155. The credentialing system includes the totality of the credentialing infrastructure and the process of issuance and renewal of credentials, examinations, inspections, investigations, continuing competency, compliance assurance, the periodic review under section 38-128, and the activities conducted under the Nebraska Regulation of Health Professions Act, for individuals and businesses that provide health services, health-related services, and environmental services.

(2) The department shall determine the cost of the credentialing system for such individuals and businesses by calculating the total of the base costs, the variable costs, and any adjustments as provided in sections 38-152 to 38-154.

(3) When fees are to be established pursuant to section 38-155 for individuals or businesses other than individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the department, with the recommendation of the appropriate board if applicable, shall base the fees on the cost of the credentialing system and shall include usual and customary cost increases, a reasonable reserve, and the cost of any new or additional credentialing activities. For individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the Water Well Standards and Contractors' Licensing Board shall establish the fees as otherwise provided in this subsection. All such fees shall be used as provided in section 38-157.

(4) In addition to the fees established under section 38-155, each applicant for the initial issuance and renewal of a credential to practice as a physician or an osteopathic physician under the Medicine and Surgery Practice Act shall pay a patient safety fee of fifty dollars and to practice as a physician assistant under the Medicine and Surgery Practice Act shall pay a patient safety fee of twenty dollars, which fee shall be collected biennially with the initial or renewal fee for the credential. Revenue from such fee shall be remitted to the State Treasurer for credit to the Patient Safety Cash Fund. The patient safety fee shall terminate on January 1, 2026, unless extended by the Legislature.

Source: Laws 1927, c. 167, § 61, p. 469; C.S.1929, § 71-701; Laws 1935, c. 142, § 34, p. 531; Laws 1937, c. 157, § 1, p. 615; Laws 1941, c. 141, § 1, p. 555; C.S.Supp.,1941, § 71-701; Laws 1943, c. 150, § 16, p. 545; R.S.1943, § 71-162; Laws 1953, c. 238, § 3, p. 825; Laws 1955, c. 270, § 2, p. 850; Laws 1957, c. 292, § 1, p. 1048; Laws 1957, c. 298, § 12, p. 1080; Laws 1959, c. 318, § 2, p. 1166; Laws 1961, c. 337, § 8, p. 1054; Laws 1963, c. 409, § 1, p. 1314; Laws 1965, c. 412, § 1, p. 1319; Laws 1967, c. 438, § 4, p. 1350; Laws 1967, c. 439, § 17, p. 1364; Laws 1969, c. 560, § 6, p. 2281; Laws 1969, c. 562, § 1, p. 2288; Laws 1971, LB 300, § 1; Laws 1971, LB 587, § 9; Laws 1973, LB 515, § 3; Laws 1975, LB 92, § 1; Laws 1978, LB 689, § 1; Laws 1978, LB 406, § 12; Laws 1979, LB 4, § 6; Laws 1979, LB 428, § 3; Laws 1981, LB 451, § 8; Laws 1982, LB 263, § 1; Laws 1982, LB 448, § 2; Laws

1982, LB 449, § 2; Laws 1982, LB 450, § 2; Laws 1984, LB 481, § 22; Laws 1985, LB 129, § 12; Laws 1986, LB 277, § 8; Laws 1986, LB 286, § 72; Laws 1986, LB 579, § 64; Laws 1986, LB 926, § 36; Laws 1986, LB 355, § 14; Laws 1987, LB 473, § 18; Laws 1988, LB 1100, § 26; Laws 1988, LB 557, § 20; Laws 1989, LB 342, § 12; Laws 1990, LB 1064, § 9; Laws 1991, LB 703, § 17; Laws 1992, LB 1019, § 39; Laws 1993, LB 187, § 7; Laws 1993, LB 669, § 12; Laws 1994, LB 1210, § 46; Laws 1994, LB 1223, § 9; Laws 1995, LB 406, § 18; Laws 1997, LB 622, § 80; Laws 1999, LB 828, § 54; Laws 2001, LB 270, § 7; Laws 2003, LB 242, § 23; Laws 2004, LB 906, § 2; Laws 2004, LB 1005, § 10; Laws 2004, LB 1083, § 113; Laws 2006, LB 994, § 81; R.S.Supp.,2006, § 71-162; Laws 2007, LB236, § 6; Laws 2007, LB283, § 1; Laws 2007, LB463, § 51; Laws 2012, LB834, § 1; Laws 2019, LB25, § 1; Laws 2019, LB112, § 8.

Cross References

Fees of state boards, see sections 33-151 and 33-152.

Medicine and Surgery Practice Act, see section 38-2001.

Nebraska Regulation of Health Professions Act, see section 71-6201.

38-154 Adjustments to the cost of credentialing.

Adjustments to the cost of credentialing include, but are not limited to:

(1) Revenue from sources that include, but are not limited to:

(a) Interest earned on the Professional and Occupational Credentialing Cash Fund, if any;

(b) Certification and verification of credentials;

(c) Administrative fees;

(d) Reinstatement fees;

(e) General Funds and federal funds;

(f) Fees for miscellaneous services, such as production of photocopies, lists, labels, and diskettes;

(g) Gifts; and

(h) Grants;

(2) Transfers to other funds for costs related to the Nebraska Regulation of Health Professions Act and section 38-128; and

(3) Costs associated with subsection (3) of section 38-155.

Source: Laws 2003, LB 242, § 26; R.S.1943, (2003), § 71-162.03; Laws 2007, LB463, § 54; Laws 2019, LB112, § 9.

Cross References

Nebraska Regulation of Health Professions Act, see section 71-6201.

38-155 Credentialing fees; establishment and collection.

(1) Subject to subsection (3) of this section, the department, with the recommendation of the appropriate board if applicable, or the Water Well Standards and Contractors' Licensing Board as provided in section 38-151, shall adopt and promulgate rules and regulations to establish and collect the fees for the following credentials:

- (a) Initial credentials, which include, but are not limited to:
- (i) Licensure, certification, or registration;
 - (ii) Add-on or specialty credentials;
 - (iii) Temporary, provisional, or training credentials; and
 - (iv) Supervisory or collaborative relationship credentials;
- (b) Applications to renew licenses, certifications, and registrations;
- (c) Approval of continuing education courses and other methods of continuing competency; and
- (d) Inspections and reinspections.

(2) When a credential will expire within one hundred eighty days after its initial issuance date or its reinstatement date and the initial credentialing or renewal fee is twenty-five dollars or more, the department shall collect twenty-five dollars or one-fourth of the initial credentialing or renewal fee, whichever is greater, for the initial or reinstated credential. The initial or reinstated credential shall be valid until the next subsequent renewal date.

(3) All fees for initial credentials under the Uniform Credentialing Act for low-income individuals, military families, and young workers shall be waived except the actual cost of the fingerprinting and criminal background check for an initial license under section 38-131.

Source: Laws 2003, LB 242, § 27; R.S.1943, (2003), § 71-162.04; Laws 2007, LB463, § 55; Laws 2012, LB773, § 1; Laws 2019, LB112, § 10.

38-178 Disciplinary actions; grounds.

Except as otherwise provided in sections 38-1,119 to 38-1,123, a credential to practice a profession may be denied, refused renewal, or have other disciplinary measures taken against it in accordance with section 38-185 or 38-186 on any of the following grounds:

- (1) Misrepresentation of material facts in procuring or attempting to procure a credential;
- (2) Immoral or dishonorable conduct evidencing unfitness to practice the profession in this state;
- (3) Abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance;
- (4) Failure to comply with a treatment program or an aftercare program, including, but not limited to, a program entered into under the Licensee Assistance Program established pursuant to section 38-175;
- (5) Conviction of (a) a misdemeanor or felony under Nebraska law or federal law, or (b) a crime in any jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony under Nebraska law and which has a rational connection with the fitness or capacity of the applicant or credential holder to practice the profession;
- (6) Practice of the profession (a) fraudulently, (b) beyond its authorized scope, (c) with gross incompetence or gross negligence, or (d) in a pattern of incompetent or negligent conduct;

(7) Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, drugs, mind-altering substances, physical disability, mental disability, or emotional disability;

(8) Physical or mental incapacity to practice the profession as evidenced by a legal judgment or a determination by other lawful means;

(9) Illness, deterioration, or disability that impairs the ability to practice the profession;

(10) Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a credential by a person not credentialed to do so;

(11) Performing or offering to perform scleral tattooing as defined in section 38-10,172 by a person not credentialed to do so;

(12) Having had his or her credential denied, refused renewal, limited, suspended, revoked, or disciplined in any manner similar to section 38-196 by another state or jurisdiction based upon acts by the applicant or credential holder similar to acts described in this section;

(13) Use of untruthful, deceptive, or misleading statements in advertisements, including failure to comply with section 38-124;

(14) Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;

(15) Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;

(16) Violations of the Uniform Credentialing Act or the rules and regulations relating to the particular profession;

(17) Unlawful invasion of the field of practice of any profession regulated by the Uniform Credentialing Act which the credential holder is not credentialed to practice;

(18) Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the act;

(19) Failure to file a report required by section 38-1,124, 38-1,125, or 71-552;

(20) Failure to maintain the requirements necessary to obtain a credential;

(21) Violation of an order issued by the department;

(22) Violation of an assurance of compliance entered into under section 38-1,108;

(23) Failure to pay an administrative penalty;

(24) Unprofessional conduct as defined in section 38-179; or

(25) Violation of the Automated Medication Systems Act.

Source: Laws 1927, c. 167, § 46, p. 466; C.S.1929, § 71-601; Laws 1943, c. 150, § 10, p. 541; R.S.1943, § 71-147; Laws 1976, LB 877, § 1; Laws 1979, LB 95, § 1; Laws 1986, LB 286, § 45; Laws 1986, LB 579, § 37; Laws 1986, LB 926, § 24; Laws 1987, LB 473, § 15; Laws 1988, LB 1100, § 16; Laws 1991, LB 456, § 7; Laws 1992, LB 1019, § 37; Laws 1993, LB 536, § 44; Laws 1994, LB 1210, § 25; Laws 1994, LB 1223, § 6; Laws 1997, LB 622, § 79; Laws 1999, LB 366, § 8; Laws 2001, LB 398, § 20; Laws 2005, LB 301,

§ 9; R.S.Supp.,2006, § 71-147; Laws 2007, LB463, § 78; Laws 2008, LB308, § 10; Laws 2011, LB591, § 2; Laws 2015, LB452, § 2; Laws 2019, LB449, § 1.

Cross References

Automated Medication Systems Act, see section 71-2444.
Uniform Controlled Substances Act, see section 28-401.01.
Uniform Deceptive Trade Practices Act, see section 87-306.

38-180 Disciplinary actions; evidence of discipline by another state or jurisdiction.

For purposes of subdivision (12) of section 38-178, a certified copy of the record of denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, registration, or other similar credential or the taking of other disciplinary measures against it by another state or jurisdiction shall be conclusive evidence of a violation.

Source: Laws 2007, LB463, § 80; Laws 2019, LB449, § 2.

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.

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.

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.

38-1,143 Telehealth; provider-patient relationship; prescription authority; applicability of section.

(1) Except as otherwise provided in subsection (4) of this section, any credential holder under the Uniform Credentialing Act may establish a provider-patient relationship through telehealth.

(2) Any credential holder under the Uniform Credentialing Act who is providing a telehealth service to a patient may prescribe the patient a drug if the credential holder is authorized to prescribe under state and federal law.

(3) The department may adopt and promulgate rules and regulations pursuant to section 38-126 that are consistent with this section.

(4) This section does not apply to a credential holder under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, the Dialysis Patient Care Technician Registration Act, the Environmental Health Specialists Practice Act, the Funeral Directing and Embalming Practice Act, the Massage Therapy Practice Act, the Medical Radiography Practice Act, the Nursing Home Administrator Practice Act, the Perfusion Practice Act, the Surgical First Assistant Practice Act, the Veterinary Medicine and Surgery Practice Act, or the Water Well Standards and Contractors' Practice Act.

Source: Laws 2019, LB29, § 2.

Cross References

Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, see section 38-1001.

Dialysis Patient Care Technician Registration Act, see section 38-3701.

Environmental Health Specialists Practice Act, see section 38-1301.

Funeral Directing and Embalming Practice Act, see section 38-1401.

Massage Therapy Practice Act, see section 38-1701.

Medical Radiography Practice Act, see section 38-1901.

Nursing Home Administrator Practice Act, see section 38-2401.

Perfusion Practice Act, see section 38-2701.

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.

38-1,144 Schedule II controlled substance or other opiate; practitioner; duties.

(1) For purposes of this section, practitioner means a physician, a physician assistant, a dentist, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, and a nurse practitioner.

(2) When prescribing a controlled substance listed in Schedule II of section 28-405 or any other opiate as defined in section 28-401 not listed in Schedule II, prior to issuing the practitioner's initial prescription for a course of treatment for acute or chronic pain, a practitioner involved in the course of treatment as the primary prescribing practitioner or as a member of the patient's care team who is under the direct supervision or in consultation with the primary prescribing practitioner shall discuss with the patient, or the patient's parent or guardian if the patient is younger than eighteen years of age

and is not emancipated, unless the discussion has already occurred with another member of the patient's care team within the previous sixty days:

(a) The risks of addiction and overdose associated with the controlled substance or opiate being prescribed, including, but not limited to:

(i) Controlled substances and opiates are highly addictive even when taken as prescribed;

(ii) There is a risk of developing a physical or psychological dependence on the controlled substance or opiate; and

(iii) Taking more controlled substances or opiates than prescribed, or mixing sedatives, benzodiazepines, or alcohol with controlled substances or opiates, can result in fatal respiratory depression;

(b) The reasons why the prescription is necessary; and

(c) Alternative treatments that may be available.

(3) This section does not apply to a prescription for a hospice patient or for a course of treatment for cancer or palliative care.

(4) This section terminates on January 1, 2029.

Source: Laws 2018, LB931, § 3; R.S.Supp.,2018, § 28-473; Laws 2019, LB556, § 2.

38-1,145 Opiates; legislative findings; limitation on certain prescriptions; practitioner; duties.

(1) For purposes of this section, practitioner means a physician, a physician assistant, a dentist, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, and a nurse practitioner.

(2) The Legislature finds that:

(a) In most cases, acute pain can be treated effectively with nonopiate or nonpharmacological options;

(b) With a more severe or acute injury, short-term use of opiates may be appropriate;

(c) Initial opiate prescriptions for children should not exceed seven days for most situations, and two or three days of opiates will often be sufficient;

(d) If a patient needs medication beyond three days, the prescriber should reevaluate the patient prior to issuing another prescription for opiates; and

(e) Physical dependence on opiates can occur within only a few weeks of continuous use, so great caution needs to be exercised during this critical recovery period.

(3) A practitioner who is prescribing an opiate as defined in section 28-401 for a patient younger than eighteen years of age for outpatient use for an acute condition shall not prescribe more than a seven-day supply except as otherwise provided in subsection (4) of this section and, if the practitioner has not previously prescribed an opiate for such patient, shall discuss with a parent or guardian of such patient, or with the patient if the patient is an emancipated minor, the risks associated with use of opiates and the reasons why the prescription is necessary.

(4) If, in the professional medical judgment of the practitioner, more than a seven-day supply of an opiate is required to treat such patient's medical condition or is necessary for the treatment of pain associated with a cancer

diagnosis or for palliative care, the practitioner may issue a prescription for the quantity needed to treat such patient's medical condition or pain. The practitioner shall document the medical condition triggering the prescription of more than a seven-day supply of an opiate in the patient's medical record and shall indicate that a nonopiate alternative was not appropriate to address the medical condition.

(5) This section does not apply to controlled substances prescribed pursuant to section 28-412.

(6) This section terminates on January 1, 2029.

Source: Laws 2018, LB931, § 4; R.S.Supp.,2018, § 28-474; Laws 2019, LB556, § 3.

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.

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.

38-321. Rules and regulations.

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 (1) meets the requirements of the Alcohol and Drug Counseling Practice Act, (2) meets substantially equivalent requirements as determined by the department, with the recommendation of the board, or (3) holds a license or certification that is current in another jurisdiction that authorizes the applicant to provide alcohol and drug counseling, has at least two hundred seventy hours of alcohol and drug counseling education, has at least three years of full-time alcohol and drug counseling practice following initial licensure or certification in the other jurisdiction, and has passed an alcohol and drug counseling examination. 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; Laws 2018, LB1034, § 6.

38-321 Rules and regulations.

The department, with the recommendation of the board, shall adopt and promulgate rules and regulations to administer the Alcohol and Drug Counseling Practice Act, including rules and regulations governing:

(1) Ways of clearly identifying students, interns, and other persons providing alcohol and drug counseling under supervision;

(2) The rights of persons receiving alcohol and drug counseling;

(3) The rights of clients to gain access to their records, except that records relating to substance abuse may be withheld from a client if an alcohol and drug counselor determines, in his or her professional opinion, that release of the records to the client would not be in the best interest of the client or would

pose a threat to another person, unless the release of the records is required by court order;

(4) The contents and methods of distribution of disclosure statements to clients of alcohol and drug counselors; and

(5) Standards of professional conduct and a code of ethics.

Source: Laws 2004, LB 1083, § 125; R.S.Supp.,2006, § 71-1,361; Laws 2007, LB463, § 172; Laws 2018, LB1034, § 7.

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.

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.

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.

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.

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.

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.

COSMETOLOGY AND SIMILAR PRACTICES

ARTICLE 10

**COSMETOLOGY, ELECTROLOGY, ESTHETICS, NAIL
TECHNOLOGY, AND BODY ART PRACTICE ACT**

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38-1030.	Repealed. Laws 2018, LB731, § 106.
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38-1092.	Repealed. Laws 2018, LB731, § 106.
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§ 38-1001**HEALTH OCCUPATIONS AND PROFESSIONS**

Section

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38-1001 Act, how cited.

Sections 38-1001 to 38-10,172 shall be known and may be cited as the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act.

Source: Laws 1986, LB 318, § 1; Laws 1995, LB 83, § 1; Laws 1999, LB 68, § 1; Laws 2001, LB 209, § 13; Laws 2002, LB 241, § 1; Laws 2004, LB 906, § 3; R.S.Supp.,2006, § 71-340; Laws 2007, LB463, § 263; Laws 2016, LB898, § 1; Laws 2018, LB731, § 3; Laws 2019, LB449, § 3.

38-1004 Definitions, where found.

For purposes of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1005 to 38-1056 apply.

Source: Laws 1986, LB 318, § 4; Laws 1995, LB 83, § 4; Laws 1999, LB 68, § 4; Laws 2002, LB 241, § 4; Laws 2004, LB 906, § 6; R.S.Supp.,2006, § 71-343; Laws 2007, LB463, § 266; Laws 2016, LB898, § 2; Laws 2018, LB731, § 4.

38-1005 Apprentice, defined.

Apprentice means a person engaged in the study of any or all of the practices of cosmetology under the supervision of an instructor in an apprentice salon.

Source: Laws 1986, LB 318, § 5; R.S.1943, (2003), § 71-344; Laws 2007, LB463, § 267; Laws 2018, LB731, § 5.

38-1013 Repealed. Laws 2018, LB731, § 106.**38-1014 Repealed. Laws 2018, LB731, § 106.****38-1017 Cosmetology establishment, defined.**

Cosmetology establishment means a cosmetology salon, a mobile cosmetology salon, an esthetics salon, a school of cosmetology, a school of esthetics, an apprentice salon, or any other place in which any or all of the practices of cosmetology are performed on members of the general public for compensation or in which instruction or training in any or all of the practices of cosmetology is given, except when such practices constitute nonvocational training.

Source: Laws 1986, LB 318, § 13; Laws 1999, LB 68, § 7; Laws 2002, LB 241, § 7; R.S.1943, (2003), § 71-352; Laws 2007, LB463, § 279; Laws 2018, LB731, § 6.

38-1018 Cosmetology salon, defined.

Cosmetology salon means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for the performance of any or all of the practices of cosmetology by persons licensed under such act.

Source: Laws 1986, LB 318, § 14; R.S.1943, (2003), § 71-353; Laws 2007, LB463, § 280; Laws 2018, LB731, § 7.

38-1022 Repealed. Laws 2018, LB731, § 106.**38-1028 Esthetics salon, defined.**

Esthetics salon means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for the performance of any or all of the practices of esthetics by persons licensed under such act.

Source: Laws 1986, LB 318, § 28; R.S.1943, (1996), § 71-367; Laws 2002, LB 241, § 11; R.S.1943, (2003), § 71-357.03; Laws 2007, LB463, § 290; Laws 2018, LB731, § 8.

38-1029 Repealed. Laws 2018, LB731, § 106.**38-1030 Repealed. Laws 2018, LB731, § 106.****38-1033.01 Mobile cosmetology salon, defined.**

Mobile cosmetology salon means a self-contained, self-supporting, enclosed mobile unit licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act as a mobile site for the performance of the practices of cosmetology by persons licensed under the act.

Source: Laws 2018, LB731, § 9.

38-1033.02 Mobile nail technology salon, defined.

Mobile nail technology salon means a self-contained, self-supporting, enclosed mobile unit licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as a mobile site for the performance of the practices of nail technology by persons licensed under the act.

Source: Laws 2018, LB731, § 10.

38-1036 Nail technology establishment, defined.

Nail technology establishment means a nail technology salon, a mobile nail technology salon, a nail technology school, or any other place in which the practices of nail technology are performed on members of the general public for compensation or in which instruction or training in the practices of nail technology is given, except when such practices constitute nonvocational training.

Source: Laws 1999, LB 68, § 11; R.S.1943, (2003), § 71-361.03; Laws 2007, LB463, § 298; Laws 2018, LB731, § 11.

38-1038 Nail technology salon, defined.

Nail technology salon means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for the performance of the practices of nail technology by persons licensed under the act.

Source: Laws 1999, LB 68, § 13; R.S.1943, (2003), § 71-361.05; Laws 2007, LB463, § 300; Laws 2018, LB731, § 12.

38-1043 Nonvocational training, defined.

Nonvocational training means the act of imparting knowledge of or skills in any or all of the practices of cosmetology, nail technology, esthetics, or electrology to persons not licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act for the purpose of noncommercial use by those receiving such training.

Source: Laws 1986, LB 318, § 23; Laws 1995, LB 83, § 11; Laws 1999, LB 68, § 18; Laws 2002, LB 241, § 12; R.S.1943, (2003), § 71-362; Laws 2007, LB463, § 305; Laws 2018, LB731, § 13.

38-1058 Cosmetology; licensure required.

It shall be unlawful for any person, group, company, or other entity to engage in any of the following acts without being duly licensed as required by the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, unless specifically excepted by such act:

- (1) To engage in or follow or to advertise or hold oneself out as engaging in or following any of the practices of cosmetology or to act as a practitioner;
- (2) To engage in or advertise or hold oneself out as engaging in the teaching of any of the practices of cosmetology; or

(3) To operate or advertise or hold oneself out as operating a cosmetology establishment in which any of the practices of cosmetology or the teaching of any of the practices of cosmetology are carried out.

Source: Laws 1986, LB 318, § 46; R.S.1943, (2003), § 71-385; Laws 2007, LB463, § 320; Laws 2018, LB731, § 14.

38-1061 Licensure; categories; use of titles prohibited; practice in licensed establishment or facility.

(1) All practitioners shall be licensed by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act in a category or categories appropriate to their practice.

(2) Licensure shall be required before any person may engage in the full, unsupervised practice or teaching of cosmetology, electrology, esthetics, nail technology, or body art, and no person may assume the title of cosmetologist, electrologist, esthetician, instructor, nail technician, nail technology instructor, esthetics instructor, permanent color technician, tattoo artist, body piercer, or body brander without first being licensed by the department.

(3) All licensed practitioners shall practice in an appropriate licensed establishment or facility.

Source: Laws 1986, LB 318, § 47; Laws 1995, LB 83, § 21; Laws 1999, LB 68, § 27; Laws 2002, LB 241, § 22; Laws 2004, LB 906, § 19; R.S.Supp.,2006, § 71-386; Laws 2007, LB463, § 323; Laws 2018, LB731, § 15.

38-1062 Licensure by examination; requirements.

In order to be licensed by the department by examination, an individual shall meet, and present to the department evidence of meeting, the following requirements:

(1) Has attained the age of seventeen years on or before the beginning date of the examination for which application is being made;

(2) Has completed formal education equivalent to a United States high school education;

(3) Possesses a minimum competency in the knowledge and skills necessary to perform the practices for which licensure is sought, as evidenced by successful completion of an examination in the appropriate practices approved by the board and administered by the department;

(4) Possesses sufficient ability to read the English language to permit the applicant to practice in a safe manner, as evidenced by successful completion of the written examination; and

(5) Has graduated from a school of cosmetology or an apprentice salon in or outside of Nebraska, a school of esthetics in or outside of Nebraska, or a school of electrolysis upon completion of a program of studies appropriate to the practices for which licensure is being sought, as evidenced by a diploma or certificate from the school or apprentice salon to the effect that the applicant has complied with the following:

(a) For licensure as a cosmetologist, the program of studies shall consist of a minimum of one thousand eight hundred hours;

(b) For licensure as an esthetician, the program of studies shall consist of a minimum of six hundred hours;

(c) For licensure as a cosmetology instructor, the program of studies shall consist of a minimum of six hundred hours beyond the program of studies required for licensure as a cosmetologist;

(d) For licensure as a cosmetology instructor, be currently licensed as a cosmetologist in Nebraska, as evidenced by possession of a valid Nebraska cosmetology license;

(e) For licensure as an electrologist, the program of studies shall consist of a minimum of six hundred hours;

(f) For licensure as an electrology instructor, be currently licensed as an electrologist in Nebraska and have practiced electrology actively for at least two years immediately before the application; and

(g) For licensure as an esthetics instructor, completion of a program of studies consisting of a minimum of three hundred hours beyond the program of studies required for licensure as an esthetician and current licensure as an esthetician in Nebraska.

Source: Laws 1986, LB 318, § 48; Laws 1987, LB 543, § 6; Laws 1995, LB 83, § 22; Laws 1996, LB 1155, § 26; Laws 1997, LB 752, § 168; Laws 2002, LB 241, § 23; Laws 2004, LB 1005, § 26; R.S.Supp.,2006, § 71-387; Laws 2007, LB463, § 324; Laws 2018, LB731, § 16.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-1063 Application for examination.

No application for any type of licensure shall be considered complete unless all information requested in the application has been supplied, all seals and signatures required have been obtained, and all supporting and documentary evidence has been received by the department.

Source: Laws 1986, LB 318, § 49; Laws 1989, LB 344, § 8; Laws 2003, LB 242, § 82; R.S.1943, (2003) § 71-388; Laws 2007, LB463, § 325; Laws 2018, LB731, § 17.

38-1065 Examinations; requirements; grades.

(1) Examinations approved by the board may be national standardized examinations, but in all cases the examinations shall be related to the knowledge and skills necessary to perform the practices being examined and shall be related to the curricula required to be taught in schools of cosmetology, schools of esthetics, or schools of electrolysis.

(2) Practical examinations may be offered as either written or hands-on and shall be conducted in such a manner that the identity of the applicant is not disclosed to the examiners in any way.

(3) In order to successfully complete the examination, an applicant shall obtain an average grade of seventy-five percent on all examinations.

Source: Laws 1986, LB 318, § 51; Laws 1987, LB 543, § 8; Laws 1995, LB 83, § 24; Laws 1997, LB 307, § 134; R.S.1943, (2003), § 71-390; Laws 2007, LB296, § 366; Laws 2007, LB463, § 327; Laws 2018, LB731, § 18.

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 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;

(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;

(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; Laws 2018, LB731, § 19.

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.

38-1069 License; when required; temporary practitioner; license.

A license as a temporary practitioner shall be required before any person may act as a temporary practitioner, and no person shall assume any title indicative of being a temporary practitioner without first being so licensed by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act.

Source: Laws 1986, LB 318, § 59; Laws 2004, LB 906, § 22; R.S.Supp.,2006, § 71-398; Laws 2007, LB463, § 331; Laws 2018, LB731, § 20.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-1070 Temporary license; general requirements.

An individual making application for 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 license applied for.

Source: Laws 1986, LB 318, § 60; R.S.1943, (2003), § 71-399; Laws 2007, LB463, § 332; Laws 2017, LB88, § 45; Laws 2018, LB731, § 21.

38-1071 Repealed. Laws 2018, LB731, § 106.**38-1072 Repealed. Laws 2018, LB731, § 106.****38-1073 Licensure as temporary practitioner; requirements.**

An applicant for licensure as a temporary practitioner shall show evidence that his or her completed application for regular licensure has been accepted by the department, that he or she has not failed any portion of the licensure examination, and that he or she has been accepted for work in a licensed cosmetology establishment under the supervision of a licensed practitioner.

Source: Laws 1986, LB 318, § 65; R.S.1943, (2003), § 71-3,104; Laws 2007, LB463, § 335; Laws 2018, LB731, § 22.

38-1074 Temporary licensure; expiration dates; extension.

Licensure as a temporary practitioner shall expire eight weeks following the date of issuance or upon receipt of examination results, whichever occurs first. The department may extend the license an additional eight weeks.

Source: Laws 1986, LB 318, § 66; Laws 1987, LB 543, § 13; Laws 1995, LB 83, § 32; Laws 2002, LB 241, § 28; Laws 2004, LB 906, § 24; Laws 2004, LB 1005, § 29; R.S.Supp.,2006, § 71-3,105; Laws 2007, LB463, § 336; Laws 2018, LB731, § 23.

38-1075 Act; activities exempt.

The Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act does not apply to or restrict the activities of the following:

(1) Any person holding a current license or certificate issued pursuant to the Uniform Credentialing Act when engaged in the usual and customary practice of his or her profession or occupation;

(2) Any person engaging solely in earlobe piercing;

(3) Any person engaging solely in natural hair braiding;

(4) Any person when engaged in domestic or charitable administration;

(5) Any person performing any of the practices of cosmetology or nail technology solely for theatrical presentations or other entertainment functions;

(6) Any person practicing cosmetology, electrology, esthetics, or nail technology within the confines of a hospital, nursing home, massage therapy establishment, funeral establishment, or other similar establishment or facility licensed or otherwise regulated by the department, except that no unlicensed person may accept compensation for such practice;

(7) Any person providing services during a bona fide emergency;

(8) Any retail or wholesale establishment or any person engaged in the sale of cosmetics, nail technology products, or other beauty products when the products are applied by the customer or when the application of the products is in direct connection with the sale or attempted sale of such products at retail;

(9) Any person when engaged in nonvocational training;

(10) A person demonstrating on behalf of a manufacturer or distributor any cosmetology, nail technology, electrolysis, or body art equipment or supplies if such demonstration is performed without charge;

(11) Any person or licensee engaged in the practice or teaching of manicuring;

(12) Any person or licensee engaged in the practice of airbrush tanning or temporary, nonpermanent airbrush tattooing; and

(13) Any person applying cosmetics.

Source: Laws 1986, LB 318, § 67; Laws 1987, LB 543, § 14; Laws 1988, LB 1100, § 97; Laws 1995, LB 83, § 33; Laws 1999, LB 68, § 44; Laws 2001, LB 209, § 16; Laws 2004, LB 906, § 28; Laws 2005, LB 256, § 33; R.S.Supp.,2006, § 71-3,106; Laws 2007, LB463, § 337; Laws 2016, LB898, § 4; Laws 2018, LB731, § 24.

38-1086 Licensed salon; operating requirements.

In order to maintain its license in good standing, each salon shall operate in accordance with the following requirements:

- (1) The salon shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;
- (2) The salon owner or his or her agent shall notify the department at least thirty days prior to any change of ownership, name, or address, and within one week if a salon is permanently closed, except in emergency circumstances as determined by the department;
- (3) No salon shall permit any unlicensed person to perform any of the practices of cosmetology within its confines or employment;
- (4) The salon shall display a name upon, over, or near the entrance door distinguishing it as a salon;
- (5) The salon shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the salon, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the salon, all personnel, and all records requested by the inspector;
- (6) The salon shall display in a conspicuous place the following records:
 - (a) The current license or certificate of consideration to operate a salon;
 - (b) The current licenses of all persons employed by or working in the salon; and
 - (c) The rating sheet from the most recent operation inspection;
- (7) At no time shall a salon employ more employees than permitted by the square footage requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act; and
- (8) The salon shall not knowingly permit its employees to use or consume intoxicating beverages upon its premises.

Source: Laws 1986, LB 318, § 85; R.S.1943, (2003), § 71-3,124; Laws 2007, LB463, § 348; Laws 2018, LB731, § 25.

38-1091 Repealed. Laws 2018, LB731, § 106.

38-1092 Repealed. Laws 2018, LB731, § 106.

38-1093 Repealed. Laws 2018, LB731, § 106.

38-1094 Repealed. Laws 2018, LB731, § 106.

38-1095 Repealed. Laws 2018, LB731, § 106.

38-1096 Repealed. Laws 2018, LB731, § 106.

38-1097 School of cosmetology; license; requirements.

In order to be licensed as a school of cosmetology by the department, an applicant shall meet and present to the department evidence of meeting the following requirements:

- (1) The proposed school shall be a fixed permanent structure or part of one;
- (2) The proposed school shall have a contracted enrollment of at least ten full-time or part-time students;

(3) The proposed school shall contain at least three thousand five hundred square feet of floor space and facilities, staff, apparatus, and equipment appropriate to its projected enrollment in accordance with the standards established by rule and regulation; and

(4) The proposed school shall not have the same entrance as or direct access to a cosmetology salon, esthetics salon, or nail technology salon.

A school of cosmetology is not required to be licensed as a school of esthetics in order to provide an esthetics training program or as a school of nail technology in order to provide a nail technology training program.

Source: Laws 1986, LB 318, § 97; Laws 2002, LB 241, § 33; R.S.1943, (2003), § 71-3,136; Laws 2007, LB463, § 359; Laws 2018, LB731, § 26.

38-1099 School of cosmetology license; school of esthetics license; application; additional information.

Along with the application the applicant for a license to operate a school of cosmetology or school of esthetics shall submit:

(1) A detailed floor plan or blueprint of the proposed school building sufficient to show compliance with the relevant rules and regulations;

(2) Evidence of minimal property damage, personal injury, and liability insurance coverage for the proposed school;

(3) A copy of the curriculum to be taught for all courses;

(4) A copy of the school catalog, handbook, or policies and the student contract; and

(5) A list of the names and credentials of all licensees to be employed by the school.

Source: Laws 1986, LB 318, § 99; Laws 2002, LB 241, § 36; R.S.1943, (2003), § 71-3,138; Laws 2007, LB463, § 361; Laws 2018, LB731, § 27.

38-10,100 School of esthetics license; application; additional information.

In order to be licensed as a school of esthetics by the department, an applicant shall meet and present to the department evidence of meeting the following requirements:

(1) The proposed school shall be a fixed permanent structure or part of one;

(2) The proposed school shall have a contracted enrollment of at least four full-time or part-time students;

(3) The proposed school shall contain at least one thousand square feet of floor space and facilities, staff, apparatus, and equipment appropriate to its projected enrollment in accordance with the standards established by rule and regulation; and

(4) The proposed school shall not have the same entrance as or direct access to a cosmetology salon, an esthetics salon, or a nail technology salon.

Source: Laws 2002, LB 241, § 34; R.S.1943, (2003), § 71-3,138.02; Laws 2007, LB463, § 362; Laws 2018, LB731, § 28.

38-10,102 Licensed school; operating requirements.

In order to maintain its license in good standing, each school of cosmetology or school of esthetics shall operate in accordance with the following requirements:

(1) The school shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The school owner or owners or the authorized agent thereof shall notify the department at least thirty days prior to any change of ownership, name, or address, and at least sixty days prior to closure, except in emergency circumstances as determined by the department;

(3) No school shall permit anyone other than a student, student instructor, or instructor to perform any of the practices of cosmetology or esthetics within its confines or employ, except that such restriction shall not prevent a school from inviting guest educators who are not licensed to provide education to students or student instructors if the guest educator does not perform any of the practices of cosmetology or esthetics;

(4) The school shall display a name upon or near the entrance door designating it as a school of cosmetology or a school of esthetics;

(5) The school shall display in a conspicuous place within the clinic area a sign reading: All services in this school are performed by students who are training in cosmetology or esthetics, as applicable. A notice to such effect shall also appear in all advertising conducted by the school for its clinic services;

(6) The school shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the school without prior notice, and the owner or manager shall assist the inspector by providing access to all areas of the school, all personnel, and all records requested by the inspector;

(7) The school shall display in a conspicuous place the following records:

(a) The current license to operate a school of cosmetology or school of esthetics;

(b) The current licenses of all persons licensed under the act, except students, employed by or working in the school; and

(c) The rating sheet from the most recent accreditation inspection;

(8) At no time shall a school enroll more students than permitted by the act or the rules and regulations adopted and promulgated under the act;

(9) The school shall not knowingly permit its students, employees, or clients to use, consume, serve, or in any other manner possess or distribute intoxicating beverages or controlled substances upon its premises;

(10) No instructor or student instructor shall perform, and no school shall permit such person to perform, any of the practices of cosmetology or esthetics on the public in a school of cosmetology or school of esthetics other than that part of the practical work which pertains directly to the teaching of practical subjects to students or student instructors and in no instance shall complete cosmetology or esthetics services be provided for a client unless done in a demonstration class of theoretical or practical studies;

(11) The school shall maintain space, staff, library, teaching apparatus, and equipment as established by rules and regulations adopted and promulgated under the act;

(12) The school shall keep a daily record of the attendance and clinical performance of each student and student instructor;

(13) The school shall maintain regular class and instructor hours and shall require the minimum curriculum;

(14) The school shall establish and maintain criteria and standards for student grading, evaluation, and performance and shall award a certificate or diploma to a student only upon completing a full course of study in compliance with such standards, except that no student shall receive such certificate or diploma until he or she has satisfied or made an agreement with the school to satisfy all outstanding financial obligations to the school;

(15) The school shall maintain on file the enrollment of each student;

(16) The school shall maintain a report indicating the students and student instructors enrolled, the hours earned, the instructors employed, the hours of operation, and such other pertinent information as required by the department; and

(17) The school shall print and provide to each student a copy of the school rules, which shall not be inconsistent with the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, the Uniform Credentialing Act, or the rules and regulations adopted and promulgated under either act and which shall include policies of the school with respect to tuition, reimbursement, conduct, attendance, grading, earning of hours, demerits, penalties, dismissal, graduation requirements, dress, and other information sufficient to advise the student of the standards he or she will be required to maintain. The department may review any school's rules to determine their consistency with the intent and content of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and the rules and regulations and may overturn any school rules found not to be in accord.

Source: Laws 1986, LB 318, § 101; Laws 1987, LB 543, § 20; Laws 1995, LB 83, § 42; Laws 2002, LB 241, § 38; Laws 2004, LB 1005, § 33; R.S.Supp.,2006, § 71-3,140; Laws 2007, LB463, § 364; Laws 2018, LB731, § 29.

38-10,103 School or apprentice salon; operation; student; apprentice; student instructor; requirements.

In order to maintain a school or apprentice salon license in good standing, each school or apprentice salon shall operate in accordance with the following:

(1) Every person accepted for enrollment as a standard student or apprentice shall show evidence that he or she attained the age of seventeen years on or before the date of his or her enrollment in a school of cosmetology, a school of esthetics, or an apprentice salon, has completed the equivalent of a high school education, has been accepted for enrollment at a school of cosmetology, a school of esthetics, or an apprentice salon, and has not undertaken any training in cosmetology or esthetics without being enrolled as a student or apprentice;

(2)(a) Every person accepted for enrollment as a special study student or apprentice shall show evidence that he or she:

(i) Has attained the age of seventeen years on or before the date of enrollment in a school of cosmetology, a school of esthetics, or an apprentice salon;

(ii) Has completed the tenth grade;

(iii) Has been accepted for enrollment at a school of cosmetology, a school of esthetics, or an apprentice salon; and

(iv) Is actively continuing his or her formal high school education on a full-time basis as determined by the department.

(b) An applicant for enrollment as a special study student or apprentice shall not have undertaken any training in cosmetology or esthetics without being enrolled as a student or apprentice.

(c) Special study students shall be limited to attending a school of cosmetology, a school of esthetics, or an apprentice salon for no more than eight hours per week during the school year;

(3) Every person accepted for enrollment as a student instructor shall show evidence of current licensure as a cosmetologist or esthetician in Nebraska and completion of formal education equivalent to a United States high school education; and

(4) No school of cosmetology, school of esthetics, or apprentice salon shall accept an individual for enrollment who does not provide evidence of meeting the age and education requirements.

Source: Laws 1986, LB 318, § 63; Laws 1987, LB 543, § 11; Laws 1995, LB 83, § 31; Laws 2002, LB 241, § 26; Laws 2004, LB 1005, § 28; R.S.Supp.,2006, § 71-3,102; Laws 2007, LB463, § 365; Laws 2018, LB731, § 30.

38-10,104 Licensed school; additional operating requirements.

In order to maintain its license in good standing, each school of cosmetology or school of esthetics shall operate in accordance with the following requirements:

(1) All persons accepted for enrollment as students shall meet the qualifications established in section 38-10,103;

(2) The school shall, at all times the school is in operation, have at least one instructor in the school for each twenty students or fraction thereof enrolled in the school, except that freshman and advanced students shall be taught by different instructors in separate classes;

(3) The school shall not permit any student to render clinical services on members of the public with or without fees until such student has satisfactorily completed the freshman curriculum, except that the board may establish guidelines by which it may approve such practices as part of the freshman curriculum;

(4) No school shall pay direct compensation to any of its students. Student instructors may be paid as determined by the school;

(5) All students and student instructors shall be under the supervision of an instructor at all times, except that students shall be under the direct supervision of an instructor or student instructor at all times when cosmetology or esthetics services are being taught or performed and student instructors may independently supervise students after successfully completing at least one-half of the required instructor program;

(6) No student shall be permitted by the school to train or work in a school in any manner for more than ten hours a day; and

(7) The school shall not credit a student or student instructor with hours except when such hours were earned in the study or practice of cosmetology, esthetics, nail technology, or barbering in accordance with the required curriculum. Hours shall be credited on a daily basis. Once credited, hours cannot be removed or disallowed except by the department upon a finding that the hours have been wrongfully allowed.

Source: Laws 1986, LB 318, § 102; Laws 1987, LB 543, § 21; Laws 1995, LB 83, § 43; Laws 2002, LB 241, § 39; Laws 2004, LB 1005, § 34; R.S.Supp.,2006, § 71-3,141; Laws 2007, LB463, § 366; Laws 2018, LB731, § 31.

38-10,105 Transfer of cosmetology student; requirements.

A student may transfer from one school of cosmetology to another school at any time without penalty if all tuition obligations to the school from which the student is transferring have been honored and if the student secures a letter from the school from which he or she is transferring stating that the student has not left any unfulfilled tuition obligations and stating the number of hours earned by the student at such school, including any hours the student transferred into that school, and the dates of attendance of the student at that school. The student may not begin training at the new school until such conditions have been fulfilled. The school to which the student is transferring shall be entitled to receive from the student's previous school, upon request, all records pertaining to the student.

Source: Laws 1986, LB 318, § 103; R.S.1943, (2003), § 71-3,142; Laws 2007, LB463, § 367; Laws 2018, LB731, § 32.

38-10,106 Repealed. Laws 2018, LB731, § 106.

38-10,107 Licensed barber; licensed cosmetologist; waiver of course requirements; conditions.

(1) Barbers licensed in the State of Nebraska attending a school of cosmetology may be given credit of one thousand hours of training applied toward the course hours required for graduation.

(2) Cosmetologists licensed in the State of Nebraska attending a barber school or college may be given credit of one thousand hours of training applied toward the course hours required for graduation.

Source: Laws 1986, LB 318, § 105; R.S.1943, (2003), § 71-3,144; Laws 2007, LB463, § 369; Laws 2018, LB731, § 33.

Cross References

Barbering license under the Barber Act, see section 71-224.

38-10,108 School of cosmetology; student instructors; limitation.

No school of cosmetology shall at any time enroll more than three student instructors for each full-time instructor actively working in and employed by the school.

Source: Laws 1986, LB 318, § 107; R.S.1943, (2003), § 71-3,146; Laws 2007, LB463, § 370; Laws 2018, LB731, § 34.

38-10,112 School; owner; liability; manager required.

(1) The owner of each school of cosmetology or school of esthetics shall have full responsibility for ensuring that the school is operated in compliance with all applicable laws and rules and regulations and shall be liable for any and all violations occurring in the school.

(2) Each school of cosmetology or school of esthetics shall be operated by a manager who shall be present on the premises of the school no less than thirty-five hours each week. The manager may have responsibility for the daily operation of the school or satellite classroom.

Source: Laws 1986, LB 318, § 111; Laws 1995, LB 83, § 46; Laws 2002, LB 241, § 42; Laws 2004, LB 1005, § 37; R.S.Supp.,2006, § 71-3,150; Laws 2007, LB463, § 374; Laws 2018, LB731, § 35.

38-10,120 Home services permit; issuance.

(1) A licensed cosmetology salon or esthetics salon may employ licensed cosmetologists and estheticians, according to the licensed activities of the salon, to perform home services by meeting the following requirements:

(a) In order to be issued a home services permit by the department, an applicant shall hold a current active salon license; and

(b) Any person seeking a home services permit shall submit a complete application at least ten days before the proposed date for beginning home services. Along with the application the applicant shall submit evidence of liability insurance or bonding.

(2) The department shall issue a home services permit to each applicant meeting the requirements set forth in this section.

Source: Laws 1986, LB 318, § 120; Laws 1995, LB 83, § 47; Laws 2002, LB 241, § 46; R.S.1943, (2003), § 71-3,159; Laws 2007, LB463, § 382; Laws 2018, LB731, § 36.

38-10,121 Home services permit; requirements.

In order to maintain in good standing or renew its home services permit, a salon shall at all times operate in accordance with all requirements for operation, maintain its license in good standing, and comply with the following requirements:

(1)(a) Clients receiving home services shall be in emergency or persistent circumstances which shall generally be defined as any condition sufficiently immobilizing to prevent the client from leaving his or her residence regularly to conduct routine affairs of daily living such as grocery shopping, visiting friends and relatives, attending social events, attending worship services, and other similar activities.

(b) Emergency or persistent circumstances may include such conditions or situations as:

(i) Chronic illness or injury leaving the client bedridden or with severely restricted mobility;

(ii) Extreme general infirmity such as that associated with the aging process;

(iii) Temporary conditions including, but not limited to, immobilizing injury and recuperation from serious illness or surgery;

(iv) Having sole responsibility for the care of an invalid dependent or a mentally disabled person requiring constant attention;

(v) Mental disability that significantly limits the client in areas of functioning described in subdivision (1)(a) of this section; or

(vi) Any other conditions that, in the opinion of the department, meet the general definition of emergency or persistent circumstances;

(2) The salon shall determine that each person receiving home services meets the requirements of subdivision (1) of this section and shall:

(a) Complete a client information form supplied by the department before home services may be provided to any client; and

(b) Keep on file the client information forms of all clients it is currently providing with home services or to whom it has provided such services within the past two years;

(3) The salon shall employ or contract with persons licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to provide home services and shall not permit any person to perform any home services under its authority for which he or she is not licensed;

(4) No client shall be left unattended while any chemical service is in progress or while any electrical appliance is in use; and

(5) Each salon providing home services shall post a daily itinerary for each licensee providing home services. The kit for each licensee shall be available for inspection at the salon or at the home of the client receiving services.

Source: Laws 1986, LB 318, § 121; Laws 1995, LB 83, § 48; R.S.1943, (2003), § 71-3,160; Laws 2007, LB463, § 383; Laws 2020, LB755, § 1.

Effective date November 14, 2020.

38-10,125.01 Mobile cosmetology salon; license; requirements.

In order to be licensed as a mobile cosmetology salon by the department, an applicant shall meet, and present to the department evidence of meeting, the following requirements:

(1) The proposed salon is a self-contained, self-supporting, enclosed mobile unit;

(2)(a)(i) The mobile unit has a global positioning system tracking device that enables the department to track the location of the salon over the Internet;

(ii) The device is on board the mobile unit and functioning at all times the salon is in operation or open for business; and

(iii) The owner of the salon provides the department with all information necessary to track the salon over the Internet; or

(b) The owner of the salon submits to the department, in a manner specified by the department, a weekly itinerary showing the dates, exact locations, and times that cosmetology services are scheduled to be provided. The owner shall submit the itinerary not less than seven calendar days prior to the beginning of the service described in the itinerary and shall submit to the department any changes in the itinerary not less than twenty-four hours prior to the change. A salon shall follow the itinerary in providing service and notify the department of any changes;

(3) The salon has insurance coverage which meets the requirements of the department for the mobile unit;

- (4) The salon is clearly identified as such to the public by a sign;
- (5) The salon complies with the sanitary requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;
- (6) The entrance into the proposed salon used by the general public provides safe access by the public;
- (7) The proposed salon has at least one hundred fifty square feet of floor space. If more than one practitioner is to be employed in the salon at the same time, the salon shall contain an additional space of at least fifty square feet for each additional practitioner; and
- (8) The proposed salon includes a functional sink and toilet facilities and maintains an adequate supply of clean water and wastewater storage capacity.

Source: Laws 2018, LB731, § 37.

38-10,125.02 Mobile cosmetology salon license; application.

Any person seeking a license to operate a mobile cosmetology salon shall submit a completed application to the department, and along with the application, the applicant shall submit a detailed floor plan or blueprint of the proposed salon sufficient to demonstrate compliance with the requirements of section 38-10,125.01.

Source: Laws 2018, LB731, § 38.

38-10,125.03 Mobile cosmetology salon; application; review; denial; inspection.

Each application for a license to operate a mobile cosmetology salon shall be reviewed by the department for compliance with the requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. If an application is denied, the applicant shall be informed in writing of the grounds for denial, and such denial shall not prejudice future applications by the applicant. If an application is approved, the department shall issue the applicant a certificate of consideration to operate a mobile cosmetology salon pending an operation inspection. The department shall conduct an operation inspection of each salon issued a certificate of consideration within six months after the issuance of such certificate. A salon which passes the inspection shall be issued a permanent license. A salon which fails the inspection shall submit within fifteen days evidence of corrective action taken to improve those aspects of operation found deficient. If evidence is not submitted within fifteen days or if after a second inspection the salon does not receive a satisfactory rating, it shall immediately relinquish its certificate of consideration and cease operation.

Source: Laws 2018, LB731, § 39.

38-10,125.04 Mobile cosmetology salon; operating requirements.

In order to maintain its license in good standing, each mobile cosmetology salon shall operate in accordance with the following requirements:

- (1) The salon shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under the act;

(2) The salon owner or his or her agent shall notify the department of any change of ownership, name, or office address and if a salon is permanently closed;

(3) No salon shall permit any unlicensed person to perform any of the practices of cosmetology within its confines or employment;

(4) The salon shall display a name upon, over, or near the entrance door distinguishing it as a salon;

(5) The salon shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the salon, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the salon, all personnel, and all records requested by the inspector;

(6) The salon shall display in a conspicuous place the following records:

(a) The current license or certificate of consideration to operate a salon;

(b) The current licenses of all persons licensed under the act who are employed by or working in the salon; and

(c) The rating sheet from the most recent operation inspection;

(7) At no time shall a salon employ more employees than permitted by the square footage requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(8) No cosmetology services may be performed in a salon while the salon is moving. The salon must be safely and legally parked in a legal parking space at all times while clients are present inside the salon. A salon shall not park or conduct business within three hundred feet of another licensed cosmetology establishment. The department is not responsible for monitoring for enforcement of this subdivision but may discipline a license for a reported and verified violation;

(9) The owner of the salon shall maintain a permanent business address at which correspondence from the department may be received and records of appointments, license numbers, and vehicle identification numbers shall be kept for each salon being operated by the owner. The owner shall make such records available for verification and inspection by the department; and

(10) The salon shall not knowingly permit its employees or clients to use, consume, serve, or in any manner possess or distribute intoxicating beverages or controlled substances upon its premises.

Source: Laws 2018, LB731, § 40.

38-10,125.05 Mobile cosmetology salon license; renewal.

The procedure for renewing a mobile cosmetology salon license shall be in accordance with section 38-143, except that in addition to all other requirements, the salon shall submit evidence of minimal property damage, bodily injury, and liability insurance coverage for the salon and evidence of coverage which meets the requirements of the Motor Vehicle Registration Act for the salon.

Source: Laws 2018, LB731, § 41.

Cross References

Motor Vehicle Registration Act, see section 60-301.

38-10,125.06 Mobile cosmetology salon license; revocation or expiration; effect.

The license of a mobile cosmetology salon that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such salon may reopen for business.

Source: Laws 2018, LB731, § 42.

38-10,125.07 Mobile cosmetology salon license; change of ownership or mobile unit; effect.

Each mobile cosmetology salon license issued shall be in effect solely for the owner or owners and the mobile unit named thereon and shall expire automatically upon any change of ownership or mobile unit. An original application for licensure shall be submitted and approved before such salon may reopen for business.

Source: Laws 2018, LB731, § 43.

38-10,125.08 Mobile cosmetology salon; owner liability.

The owner of each mobile cosmetology salon shall have full responsibility for ensuring that the salon is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the salon.

Source: Laws 2018, LB731, § 44.

38-10,128 Nail technician or instructor; licensure by examination; requirements.

In order to be licensed as a nail technician or nail technology instructor by examination, an individual shall meet, and present to the department evidence of meeting, the following requirements:

(1) He or she has attained the age of seventeen years on or before the beginning date of the examination for which application is being made;

(2) He or she has completed formal education equivalent to a United States high school education;

(3) He or she possesses sufficient ability to read the English language to permit the applicant to practice in a safe manner, as evidenced by successful completion of the written examination; and

(4) He or she has graduated from a school of cosmetology or nail technology school providing a nail technology program. Evidence of graduation shall include documentation of the total number of hours of training earned and a diploma or certificate from the school to the effect that the applicant has complied with the following:

(a) For licensure as a nail technician, the program of studies shall consist of three hundred hours; and

(b) For licensure as a nail technology instructor, the program of studies shall consist of three hundred hours beyond the program of studies required for licensure as a nail technician and the individual shall be currently licensed as a nail technician in Nebraska as evidenced by possession of a valid Nebraska nail technician license.

The department shall grant a license in the appropriate category to any person meeting the requirements specified in this section.

Source: Laws 1999, LB 68, § 31; R.S.1943, (2003), § 71-3,183; Laws 2007, LB463, § 390; Laws 2018, LB731, § 45.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-10,129 Application for nail technology licensure; procedure.

No application for any type of licensure shall be considered complete unless all information requested on the application form has been supplied, all seals and signatures required have been obtained, and all supporting and documentary evidence has been received by the department.

Source: Laws 1999, LB 68, § 32; Laws 2003, LB 242, § 91; R.S.1943, (2003), § 71-3,184; Laws 2007, LB463, § 391; Laws 2018, LB731, § 46.

38-10,131 Examinations; requirements; grades.

(1) Examinations approved by the board may be national standardized examinations, but in all cases the examinations shall be related to the knowledge and skills necessary to perform the practices being examined and shall be related to the curricula required to be taught in nail technology programs.

(2) In order to successfully complete the examination, an applicant shall obtain an average grade of seventy-five percent on the written examination.

Source: Laws 1999, LB 68, § 35; R.S.1943, (2003), § 71-3,187; Laws 2007, LB463, § 393; Laws 2018, LB731, § 47.

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 completion of a program of nail technician studies consisting of three hundred hours 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. Each month of full-time practice as a nail technician within the five years immediately preceding application shall be valued as equivalent to one hundred hours toward a nail technician license; and

(e) For licensure as a nail technology instructor, evidence of completion of a program of studies consisting of three hundred hours 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. Each month of full-time practice as a nail technology instructor within the five years immediately preceding application shall be valued as equivalent to one hundred hours toward a nail technology instructor license.

(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; Laws 2018, LB731, § 48.

38-10,133 Nail technology license; display.

Every person holding a license in nail technology issued by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act shall display it in a conspicuous place in his or her principal place of employment, and every nail technology establishment shall so display the then current licenses of all practitioners there employed.

Source: Laws 1999, LB 68, § 40; R.S.1943, (2003), § 71-3,192; Laws 2007, LB463, § 395; Laws 2018, LB731, § 49.

38-10,135 Nail technology temporary practitioner; application; qualifications.

An applicant for licensure as a nail technology temporary practitioner shall show evidence that his or her completed application for regular licensure has been accepted by the department, that he or she has not failed any portion of the licensure examination, and that he or she has been accepted for work in a licensed nail technology or cosmetology establishment under the supervision of a licensed nail technician or licensed cosmetologist.

Source: Laws 1999, LB 68, § 42; R.S.1943, (2003), § 71-3,194; Laws 2007, LB463, § 397; Laws 2018, LB731, § 50.

38-10,142 Nail technology salon; operating requirements.

In order to maintain its license in good standing, each nail technology salon shall operate in accordance with the following requirements:

(1) The nail technology salon shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The nail technology salon owner or his or her agent shall notify the department at least thirty days prior to any change of ownership, name, or address, and at least one week prior to closure, except in emergency circumstances as determined by the department;

(3) No nail technology salon shall permit any unlicensed person to perform any of the practices of nail technology within its confines or employment;

(4) The nail technology salon shall display a name upon, over, or near the entrance door distinguishing it as a nail technology salon;

(5) The nail technology salon shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the nail technology salon, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the nail technology salon, all personnel, and all records requested by the inspector;

(6) The nail technology salon shall display in a conspicuous place the following records:

(a) The current license or certificate of consideration to operate a nail technology salon;

(b) The current licenses of all persons licensed under the act who are employed by or working in the nail technology salon; and

(c) The rating sheet from the most recent operation inspection;

(7) At no time shall a nail technology salon employ more employees than permitted by the square footage requirements of the act; and

(8) The nail technology salon shall not knowingly permit its employees to use or consume intoxicating beverages upon its premises.

Source: Laws 1999, LB 68, § 62; R.S.1943, (2003), § 71-3,213; Laws 2007, LB463, § 404; Laws 2018, LB731, § 51.

38-10,147 Nail technology school; license; requirements.

In order to be licensed as a nail technology school by the department, an applicant shall meet, and present to the department evidence of meeting, the following requirements:

(1) The proposed school shall be a fixed, permanent structure or part of one;

(2) The proposed school shall have a contracted enrollment of students;

(3) The proposed school shall contain at least five hundred square feet of floor space and facilities, staff, apparatus, and equipment appropriate to its projected enrollment in accordance with the standards established by rule and regulation; and

(4) The proposed school shall not have the same entrance as or direct access to a cosmetology salon or nail technology salon.

Source: Laws 1999, LB 68, § 67; R.S.1943, (2003), § 71-3,218; Laws 2007, LB463, § 409; Laws 2018, LB731, § 52.

38-10,150 Nail technology school; license; application; requirements.

Along with the application, an applicant for a license to operate a nail technology school shall submit:

(1) A detailed floor plan or blueprint of the proposed school building sufficient to show compliance with the relevant rules and regulations;

(2) Evidence of minimal property damage, personal injury, and liability insurance coverage for the proposed school;

(3) A copy of the curriculum to be taught for all courses;

(4) A copy of the school catalog, handbook, or policies and the student contract; and

(5) A list of the names and credentials of all persons licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to be employed by the school.

A nail technology school's license shall be valid only for the location named in the application. When a school desires to change locations, it shall comply with section 38-10,158.

Source: Laws 1999, LB 68, § 70; Laws 2003, LB 242, § 95; R.S.1943, (2003), § 71-3,221; Laws 2007, LB463, § 412; Laws 2018, LB731, § 53.

38-10,152 Nail technology school; operating requirements.

In order to maintain its license in good standing, each nail technology school shall operate in accordance with the following requirements:

(1) The school shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The school owner or owners or their authorized agent shall notify the department at least thirty days prior to any change of ownership, name, or address, and at least sixty days prior to closure, except in emergency circumstances as determined by the department;

(3) No school shall permit anyone other than a nail technology student, nail technology student instructor, or nail technology instructor to perform any of the practices of nail technology within its confines or employment, except that such restriction shall not prevent a school from inviting guest educators who are not licensed to provide education to students or student instructors if the guest educator does not perform any of the practices of nail technology;

(4) The school shall display a name upon or near the entrance door designating it as a nail technology school;

(5) The school shall display in a conspicuous place within the clinic area a sign reading: All services in this school are performed by students who are training in nail technology. A notice to such effect shall also appear in all advertising conducted by the school for its clinic services;

(6) The school shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the school without prior notice, and the owner or manager shall assist the inspector by providing access to all areas of the school, all personnel, and all records requested by the inspector;

(7) The school shall display in a conspicuous place the following records:

(a) The current license to operate a nail technology school;

(b) The current licenses of all persons licensed under the act, except students, employed by or working in the school; and

(c) The rating sheet from the most recent accreditation inspection;

(8) At no time shall a school enroll more students than permitted by the act or the rules and regulations adopted and promulgated under the act;

(9) The school shall not knowingly permit its students, employees, or clients to use, consume, serve, or in any other manner possess or distribute intoxicating beverages or controlled substances upon its premises;

(10) No nail technology instructor or nail technology student instructor shall perform, and no school shall permit such person to perform, any of the practices of nail technology on the public in a nail technology school other than that part of the practical work which pertains directly to the teaching of practical subjects to nail technology students or nail technology student instructors, and complete nail technology services shall not be provided for a client unless done in a demonstration class of theoretical or practical studies;

(11) The school shall maintain space, staff, library, teaching apparatus, and equipment as established by rules and regulations adopted and promulgated under the act;

(12) The school shall keep a daily record of the attendance and clinical performance of each student and student instructor;

(13) The school shall maintain regular class and instructor hours and shall require the minimum curriculum;

(14) The school shall establish and maintain criteria and standards for student grading, evaluation, and performance and shall award a certificate or diploma to a student only upon completing a full course of study in compliance with such standards, except that no student shall receive such certificate or diploma until he or she has satisfied or made an agreement with the school to satisfy all outstanding financial obligations to the school;

(15) The school shall maintain on file the enrollment of each student; and

(16) The school shall print and provide to each student a copy of the school rules, which shall not be inconsistent with the act or with the rules and regulations adopted and promulgated under such act and which shall include policies of the school with respect to tuition, reimbursement, conduct, attendance, grading, earning of hours and credits, demerits, penalties, dismissal, graduation requirements, dress, and other information sufficient to advise the student of the standards he or she will be required to maintain. The department may review any school's rules to determine their consistency with the intent and content of the act and the rules and regulations and may overturn any school rules found not to be in accord.

Source: Laws 1999, LB 68, § 72; R.S.1943, (2003), § 71-3,223; Laws 2007, LB463, § 414; Laws 2018, LB731, § 54.

38-10,153 Nail technology school; students; requirements.

In order to maintain its license in good standing, each nail technology school shall operate in accordance with the following requirements:

(1) Every person accepted for enrollment as a standard student shall meet the following qualifications:

(a) He or she has attained the age of seventeen years on or before the date of his or her enrollment in a nail technology school;

(b) He or she has completed the equivalent of a high school education; and

(c) He or she has not undertaken any training in nail technology in this state after January 1, 2000, without being enrolled as a nail technology student;

(2)(a) Every person accepted for enrollment as a special study nail technology student shall meet the following requirements:

(i) He or she has attained the age of seventeen years on or before the date of enrollment in a nail technology school;

- (ii) He or she has completed the tenth grade; and
 - (iii) He or she is actively continuing his or her formal high school education on a full-time basis as determined by the department.
- (b) Special study nail technology students shall be limited to attending a nail technology school for no more than eight hours per week during the school year;
- (3) No nail technology school shall accept an individual for enrollment who does not provide evidence of meeting the age and education requirements;
- (4) Every person accepted for enrollment as a nail technology student instructor shall show evidence of current licensure as a nail technician in Nebraska and completion of formal education equivalent to a United States high school education;
- (5) The school shall, at all times the school is in operation, have at least one nail technology instructor in the school for each twenty students or fraction thereof enrolled in the school;
- (6) The school shall not permit any nail technology student to render clinical services on members of the public with or without fees until such student has satisfactorily completed the beginning curriculum, except that the department may establish guidelines by which it may approve such practices as part of the beginning curriculum;
- (7) No school shall pay direct compensation to any of its nail technology students. Nail technology student instructors may be paid as determined by the school;
- (8) All nail technology students and nail technology student instructors shall be under the supervision of a cosmetology instructor, nail technology instructor, or nail technology student instructor at all times when nail technology services are being taught or performed;
- (9) No student shall be permitted by the school to train or work in a school in any manner for more than ten hours a day; and
- (10) The school shall not credit a nail technology student or nail technology student instructor with hours except when such hours were earned in the study or practice of nail technology in accordance with the required curriculum. Hours shall be credited on a daily basis. Once credited, hours cannot be removed or disallowed except by the department upon a finding that the hours have been wrongfully allowed.

Source: Laws 1999, LB 68, § 73; Laws 2001, LB 209, § 17; R.S.1943, (2003), § 71-3,224; Laws 2007, LB463, § 415; Laws 2018, LB731, § 55.

38-10,154 Nail technology school; transfer of students.

Nail technology students or nail technology student instructors may transfer from one nail technology school to another school at any time.

The school to which the student is transferring shall be entitled to receive from the student's previous school, upon request, any and all records pertaining to the student after all financial obligations of the student to the previous school are met.

Source: Laws 1999, LB 68, § 74; R.S.1943, (2003), § 71-3,225; Laws 2007, LB463, § 416; Laws 2018, LB731, § 56.

38-10,155 Repealed. Laws 2018, LB731, § 106.**38-10,156 Nail technology school; student instructor limit.**

No nail technology school shall at any time enroll more than two nail technology student instructors for each full-time nail technology instructor or cosmetology instructor actively working in and employed by the school.

Source: Laws 1999, LB 68, § 76; R.S.1943, (2003), § 71-3,227; Laws 2007, LB463, § 418; Laws 2018, LB731, § 57.

38-10,158.01 Mobile nail technology salon; license; requirements.

In order to be licensed as a mobile nail technology salon by the department, an applicant shall meet, and present to the department evidence of meeting, the following requirements:

(1) The proposed salon is a self-contained, self-supporting, enclosed mobile unit;

(2)(a)(i) The mobile unit has a global positioning system tracking device that enables the department to track the location of the salon over the Internet;

(ii) The device is on board the mobile unit and functioning at all times the salon is in operation or open for business; and

(iii) The owner of the salon provides the department with all information necessary to track the salon over the Internet; or

(b) The owner of the salon submits to the department, in a manner specified by the department, a weekly itinerary showing the dates, exact locations, and times that nail technology services are scheduled to be provided. The owner shall submit the itinerary not less than seven calendar days prior to the beginning of the service described in the itinerary and shall submit to the department any changes in the itinerary not less than twenty-four hours prior to the change. A salon shall follow the itinerary in providing service and notify the department of any changes;

(3) The salon has insurance coverage which meets the requirements of the department for the mobile unit;

(4) The salon is clearly identified as such to the public by a sign;

(5) The salon complies with the sanitary requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(6) The entrance into the proposed salon used by the general public provides safe access by the public;

(7) The proposed salon has at least one hundred fifty square feet of floor space. If more than one practitioner is to be employed in the salon at the same time, the salon shall contain an additional space of at least fifty square feet for each additional practitioner; and

(8) The proposed salon includes a functional sink and toilet facilities and maintains an adequate supply of clean water and wastewater storage capacity.

Source: Laws 2018, LB731, § 58.

38-10,158.02 Mobile nail technology salon license; application.

Any person seeking a license to operate a mobile nail technology salon shall submit a completed application to the department, and along with the application, the applicant shall submit a detailed floor plan or blueprint of the

proposed salon sufficient to demonstrate compliance with the requirements of section 38-10,158.01.

Source: Laws 2018, LB731, § 59.

38-10,158.03 Mobile nail technology salon; application; review; denial; inspection.

Each application for a license to operate a mobile nail technology salon shall be reviewed by the department for compliance with the requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. If an application is denied, the applicant shall be informed in writing of the grounds for denial, and such denial shall not prejudice future applications by the applicant. If an application is approved, the department shall issue the applicant a certificate of consideration to operate a mobile nail technology salon pending an operation inspection. The department shall conduct an operation inspection of each salon issued a certificate of consideration within six months after the issuance of such certificate. A salon which passes the inspection shall be issued a permanent license. A salon which fails the inspection shall submit within fifteen days evidence of corrective action taken to improve those aspects of operation found deficient. If evidence is not submitted within fifteen days or if after a second inspection the salon does not receive a satisfactory rating, it shall immediately relinquish its certificate of consideration and cease operation.

Source: Laws 2018, LB731, § 60.

38-10,158.04 Mobile nail technology salon; operating requirements.

In order to maintain its license in good standing, each mobile nail technology salon shall operate in accordance with the following requirements:

- (1) The salon shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under the act;
- (2) The salon owner or his or her agent shall notify the department of any change of ownership, name, or office address and if a salon is permanently closed;
- (3) No salon shall permit any unlicensed person to perform any of the practices of nail technology within its confines or employment;
- (4) The salon shall display a name upon, over, or near the entrance door distinguishing it as a salon;
- (5) The salon shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the salon, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the salon, all personnel, and all records requested by the inspector;
- (6) The salon shall display in a conspicuous place the following records:
 - (a) The current license or certificate of consideration to operate a salon;
 - (b) The current licenses of all persons licensed under the act who are employed by or working in the salon; and
 - (c) The rating sheet from the most recent operation inspection;

(7) At no time shall a salon employ more employees than permitted by the square footage requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(8) No nail technology services may be performed in a salon while the salon is moving. The salon must be safely and legally parked in a legal parking space at all times while clients are present inside the salon. A salon shall not park or conduct business within three hundred feet of another licensed nail technology establishment. The department is not responsible for monitoring for enforcement of this subdivision but may discipline a license for a reported and verified violation;

(9) The owner of the salon shall maintain a permanent business address at which correspondence from the department may be received and records of appointments, license numbers, and vehicle identification numbers shall be kept for each salon being operated by the owner. The owner shall make such records available for verification and inspection by the department; and

(10) The salon shall not knowingly permit its employees or clients to use, consume, serve, or in any manner possess or distribute intoxicating beverages or controlled substances upon its premises.

Source: Laws 2018, LB731, § 61.

38-10,158.05 Mobile nail technology salon license; renewal.

The procedure for renewing a mobile nail technology salon license shall be in accordance with section 38-143, except that in addition to all other requirements, the salon shall submit evidence of minimal property damage, bodily injury, and liability insurance coverage for the salon and evidence of coverage which meets the requirements of the Motor Vehicle Registration Act for the salon.

Source: Laws 2018, LB731, § 62.

Cross References

Motor Vehicle Registration Act, see section 60-301.

38-10,158.06 Mobile nail technology salon license; revocation or expiration; effect.

The license of a mobile nail technology salon that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such salon may reopen for business.

Source: Laws 2018, LB731, § 63.

38-10,158.07 Mobile nail technology salon license; change of ownership or mobile unit; effect.

Each mobile nail technology salon license issued shall be in effect solely for the owner or owners and the mobile unit named thereon and shall expire automatically upon any change of ownership or mobile unit. An original application for licensure shall be submitted and approved before such salon may reopen for business.

Source: Laws 2018, LB731, § 64.

38-10,158.08 Mobile nail technology salon; owner liability.

The owner of each mobile nail technology salon shall have full responsibility for ensuring that the salon is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the salon.

Source: Laws 2018, LB731, § 65.

38-10,160 Nail technology home services permit; salon operating requirements.

In order to maintain in good standing or renew its nail technology home services permit, a nail technology salon shall at all times operate in accordance with all requirements for operation, maintain its license in good standing, and comply with the following requirements:

(1)(a) Clients receiving nail technology home services shall be in emergency or persistent circumstances which shall generally be defined as any condition sufficiently immobilizing to prevent the client from leaving his or her residence regularly to conduct routine affairs of daily living such as grocery shopping, visiting friends and relatives, attending social events, attending worship services, and other similar activities.

(b) Emergency or persistent circumstances may include such conditions or situations as:

(i) Chronic illness or injury leaving the client bedridden or with severely restricted mobility;

(ii) Extreme general infirmity such as that associated with the aging process;

(iii) Temporary conditions including, but not limited to, immobilizing injury and recuperation from serious illness or surgery;

(iv) Having sole responsibility for the care of an invalid dependent or a mentally disabled person requiring constant attention;

(v) Mental disability that significantly limits the client in areas of functioning described in subdivision (1)(a) of this section; or

(vi) Any other conditions that, in the opinion of the department, meet the general definition of emergency or persistent circumstances;

(2) The nail technology salon shall determine that each person receiving nail technology home services meets the requirements of subdivision (1) of this section and shall:

(a) Complete a client information form supplied by the department before nail technology home services may be provided to any client; and

(b) Keep on file the client information forms of all clients it is currently providing with nail technology home services or to whom it has provided such services within the past two years;

(3) The nail technology salon shall employ or contract with persons licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to provide nail technology home services and shall not permit any person to perform any home services under its authority for which he or she is not licensed;

(4) No client shall be left unattended while any chemical service is in progress or while any electrical appliance is in use; and

(5) Each nail technology salon providing nail technology home services shall post a daily itinerary for each licensee providing home services. The kit for each licensee shall be available for inspection at the salon or at the home of the client receiving services.

Source: Laws 1999, LB 68, § 80; R.S.1943, (2003), § 71-3,231; Laws 2007, LB463, § 422; Laws 2020, LB755, § 2.
Effective date November 14, 2020.

38-10,171 Unprofessional conduct; acts enumerated.

Each of the following may be considered an act of unprofessional conduct when committed by a person licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act:

(1) Performing any of the practices regulated under the act for which an individual is not licensed or operating an establishment or facility without the appropriate license;

(2) Obstructing, interfering, or failing to cooperate with an inspection or investigation conducted by an authorized representative of the department when acting in accordance with the act;

(3) Failing to report to the department a suspected violation of the act;

(4) Aiding and abetting an individual to practice any of the practices regulated under the act for which he or she is not licensed;

(5) Engaging in any of the practices regulated under the act for compensation in an unauthorized location;

(6) Engaging in the practice of any healing art or profession for which a license is required without holding such a license;

(7) Enrolling a student or an apprentice without obtaining the appropriate documents prior to enrollment;

(8) Knowingly falsifying any student or apprentice record or report;

(9) Initiating or continuing home services to a client who does not meet the criteria established in the act;

(10) Knowingly issuing a certificate of completion or diploma to a student or an apprentice who has not completed all requirements for the issuance of such document;

(11) Failing, by a school of cosmetology, a nail technology school, a school of esthetics, or an apprentice salon, to follow its published rules;

(12) Violating, by a school of cosmetology, nail technology school, or school of esthetics, any federal or state law involving the operation of a vocational school or violating any federal or state law involving participation in any federal or state loan or grant program;

(13) Knowingly permitting any person under supervision to violate any law, rule, or regulation or knowingly permitting any establishment or facility under supervision to operate in violation of any law, rule, or regulation;

(14) Receiving two unsatisfactory inspection reports within any sixty-day period;

(15) Engaging in any of the practices regulated under the act while afflicted with any active case of a serious contagious disease, infection, or infestation, as

determined by the department, or in any other circumstances when such practice might be harmful to the health or safety of clients;

(16) Violating any rule or regulation relating to the practice of body art; and

(17) Performing body art on or to any person under eighteen years of age (a) without the prior written consent of the parent or court-appointed guardian of such person, (b) without the presence of such parent or guardian during the procedure, or (c) without retaining a copy of such consent for a period of five years.

Source: Laws 1986, LB 318, § 138; Laws 1995, LB 83, § 54; Laws 1999, LB 68, § 88; Laws 2002, LB 241, § 49; Laws 2004, LB 906, § 32; Laws 2004, LB 1005, § 39; R.S.Supp.,2006, § 71-3,177; Laws 2007, LB463, § 433; Laws 2018, LB731, § 66.

38-10,172 Scleral tattooing; prohibited acts; civil penalty.

(1) For purposes of this section, scleral tattooing means the practice of using needles, scalpels, or other related equipment to produce an indelible mark or figure on the human eye by scarring or inserting a pigment on, in, or under:

- (a) The fornix conjunctiva;
- (b) The bulbar conjunctiva;
- (c) The ocular conjunctiva; or
- (d) Another ocular surface.

(2) Except as provided in subsection (3) of this section, a person shall not perform or offer to perform scleral tattooing on another person.

(3) This section does not apply to a person licensed to practice medicine and surgery or osteopathic medicine and surgery pursuant to the Uniform Credentialing Act when the licensee is performing a procedure within the scope of her or his practice.

(4) In addition to the remedies authorized in section 38-140 or 38-1,124, a person who performs scleral tattooing without being authorized to do so under the Uniform Credentialing Act shall be subject to a civil penalty not to exceed ten thousand dollars for each violation. If a violation continues after notification, this constitutes a separate offense. The civil penalties shall be assessed in a civil action brought for such purpose by the Attorney General in the district court of the county in which the violation occurred. Any civil penalty assessed and unpaid under this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The department may also collect in such action attorney's fees and costs incurred in the collection of the civil penalty. The department shall, within thirty days after receipt, transmit any collected civil penalty to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2019, LB449, § 4.

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 hygienist; application for permit; qualifications.
- 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; hearing.
- 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

38-1130 Licensed dental hygienist; functions authorized; when; department; duties; Health and Human Services Committee; report; hearing.

(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) Except for periodontal scaling, root planing, and the administration of local anesthesia and nitrous oxide, the department may authorize a licensed dental hygienist to perform all of the authorized functions within the scope of practice of a licensed dental hygienist in the conduct of public health-related services in a public health setting or in a health care or related facility. In addition, the department may authorize a licensed dental hygienist to perform the following functions in such a setting or facility or for such a patient:

(i) 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

(ii) 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 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) The department shall compile the data from the reports provided under subdivision (3)(c)(i) of this section and provide an annual report to the Board of Dentistry and the State Board of Health. The department shall annually evaluate the delivery of dental hygiene services in the state and, on or before September 15 of each year beginning in 2021, provide a report electronically to the Clerk of the Legislature regarding such evaluation. The Health and Human

Services Committee of the Legislature shall hold a hearing at least once every three years to assess the reports submitted pursuant to this subsection.

(5) For purposes of this section:

(a) Health care or related facility means a hospital, a nursing facility, an assisted-living facility, a correctional facility, a tribal clinic, or a school-based preventive health program; and

(b) Public health setting means a federal, state, or local public health department or clinic, community health center, rural health clinic, or other similar program or agency that serves primarily public health care program recipients.

Source: Laws 1986, LB 572, § 2; Laws 1996, LB 1044, § 415; Laws 1999, LB 800, § 5; R.S.1943, (2003), § 71-193.15; Laws 2007, LB247, § 24; Laws 2007, LB296, § 328; Laws 2007, LB463, § 463; Laws 2013, LB484, § 1; Laws 2017, LB18, § 16; Laws 2020, LB312, § 1.

Effective date November 14, 2020.

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.

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.

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.

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.

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.

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.

ARTICLE 12

EMERGENCY MEDICAL SERVICES PRACTICE ACT

Section

- 38-1201. Act, how cited.
- 38-1202. Legislative intent; act; how construed.
- 38-1203. Legislative findings.
- 38-1204. Definitions, where found.
- 38-1204.01. Advanced emergency medical technician practice of emergency medical care, defined.
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- 38-1206.03. Critical care paramedic practice of emergency medical care, defined.
- 38-1206.04. Emergency care provider, defined.
- 38-1207.01. Emergency medical technician practice of emergency medical care, defined.
- 38-1207.02. Emergency medical technician-intermediate practice of emergency medical care, defined.
- 38-1208. Transferred to section 38-1206.04.
- 38-1208.01. Paramedic practice of emergency medical care, defined.
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§ 38-1201**HEALTH OCCUPATIONS AND PROFESSIONS**

Section

- 38-1228. Department; waive rule, regulation, or standard; when.
38-1229. License; person on national registry.
38-1232. Individual liability.
38-1233. Emergency care provider; liability relating to consent.
38-1234. Emergency care provider; liability within scope of practice.
38-1237. Prohibited acts.

38-1201 Act, how cited.

Sections 38-1201 to 38-1237 shall be known and may be cited as the Emergency Medical Services Practice Act.

Source: Laws 1997, LB 138, § 1; Laws 2003, LB 242, § 128; R.S.1943, (2003), § 71-5172; Laws 2007, LB463, § 485; Laws 2018, LB1034, § 8; Laws 2020, LB1002, § 11.
Operative date November 14, 2020.

38-1202 Legislative intent; act; how construed.

It is the intent of the Legislature in enacting the Emergency Medical Services Practice Act to (1) effectuate the delivery of quality emergency medical care in the state, (2) provide for the appropriate licensure of persons providing emergency medical care and licensure of organizations providing emergency medical services, (3) provide for the establishment of educational requirements and permitted practices for persons providing emergency medical care, (4) provide a system for regulation of emergency medical care which encourages emergency care providers and emergency medical services to provide the highest degree of care which they are capable of providing, and (5) provide a flexible system for the regulation of emergency care providers and emergency medical services that protects public health and safety.

The act shall be liberally construed to effect the purposes of, carry out the intent of, and discharge the responsibilities prescribed in the act.

Source: Laws 1997, LB 138, § 2; R.S.1943, (2003), § 71-5173; Laws 2007, LB463, § 486; Laws 2020, LB1002, § 12.
Operative date November 14, 2020.

38-1203 Legislative findings.

The Legislature finds:

(1) That emergency medical care is a primary and essential health care service and that the presence of an adequately equipped ambulance and trained emergency care providers may be the difference between life and death or permanent disability to those persons in Nebraska making use of such services in an emergency;

(2) That effective delivery of emergency medical care may be assisted by a program of training and licensure of emergency care providers and licensure of emergency medical services in accordance with rules and regulations adopted by the board;

(3) That the Emergency Medical Services Practice Act is essential to aid in advancing the quality of care being provided by emergency care providers and by emergency medical services and the provision of effective, practical, and economical delivery of emergency medical care in the State of Nebraska;

(4) That the services to be delivered by emergency care providers are complex and demanding and that training and other requirements appropriate for delivery of the services must be constantly reviewed and updated; and

(5) That the enactment of a regulatory system that can respond to changing needs of patients and emergency care providers and emergency medical services is in the best interests of the residents of Nebraska.

Source: Laws 1997, LB 138, § 3; R.S.1943, (2003), § 71-5174; Laws 2007, LB463, § 487; Laws 2020, LB1002, § 13.
Operative date November 14, 2020.

38-1204 Definitions, where found.

For purposes of the Emergency Medical Services Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1204.01 to 38-1214 apply.

Source: Laws 1997, LB 138, § 4; R.S.1943, (2003), § 71-5175; Laws 2007, LB296, § 602; Laws 2007, LB463, § 488; Laws 2018, LB1034, § 9; Laws 2020, LB1002, § 14.
Operative date November 14, 2020.

38-1204.01 Advanced emergency medical technician practice of emergency medical care, defined.

Advanced emergency medical technician practice of emergency medical care means care provided in accordance with the knowledge and skill acquired through successful completion of an approved program for an advanced emergency medical technician. Such care includes, but is not limited to, (1) all of the acts that an emergency medical technician is authorized to perform and (2) complex interventions, treatments, and pharmacological interventions.

Source: Laws 2018, LB1034, § 10; Laws 2020, LB1002, § 15.
Operative date November 14, 2020.

38-1205 Ambulance, defined.

Ambulance means any privately or publicly owned motor vehicle or aircraft that is especially designed, constructed or modified, and equipped and is intended to be used and is maintained or operated for the overland or air transportation of patients upon the streets, roads, highways, airspace, or public ways in this state or any other motor vehicles or aircraft used for such purposes.

Source: Laws 2007, LB463, § 489; Laws 2018, LB1034, § 11.

38-1206.01 Emergency medical responder practice of emergency medical care, defined.

Emergency medical responder practice of emergency medical care means care provided in accordance with the knowledge and skill acquired through successful completion of an approved program for an emergency medical responder. Such care includes, but is not limited to, (1) contributing to the assessment of the health status of an individual, (2) simple, noninvasive interventions, and (3) minimizing secondary injury to an individual.

Source: Laws 2018, LB1034, § 12; Laws 2020, LB1002, § 19.
Operative date November 14, 2020.

38-1206.02 Community paramedic practice of emergency medical care, defined.

Community paramedic practice of emergency medical care means care provided by an advanced emergency medical technician, emergency medical technician, emergency medical technician-intermediate, or paramedic in accordance with the knowledge and skill acquired through successful completion of an approved program for a community paramedic at the respective licensure classification of the emergency care provider except for an emergency medical responder. Such care includes, but is not limited to, (1) the provision of telephone triage, advice, or other assistance to nonurgent 911 calls, (2) the provision of assistance or education to patients with chronic disease management, including posthospital discharge followup to prevent hospital admission or readmission, and (3) all of the acts that the respective licensure classification of an emergency care provider is authorized to perform.

Source: Laws 2020, LB1002, § 16.

Operative date November 14, 2020.

38-1206.03 Critical care paramedic practice of emergency medical care, defined.

Critical care paramedic practice of emergency medical care means care provided by a paramedic in accordance with the knowledge and skill acquired through successful completion of an approved program for a critical care paramedic. Such care includes, but is not limited to, (1) all of the acts that a paramedic is licensed to perform, (2) advanced clinical patient assessment, (3) intravenous infusions, and (4) complex interventions, treatments, and pharmacological interventions used to treat critically ill or injured patients within the critical care environment, including transport.

Source: Laws 2020, LB1002, § 17.

Operative date November 14, 2020.

38-1206.04 Emergency care provider, defined.

Emergency care provider includes all licensure classifications of emergency care providers established pursuant to the Emergency Medical Services Practice Act. Prior to December 31, 2025, emergency care provider includes advanced emergency medical technician, community paramedic, critical care paramedic, emergency medical responder, emergency medical technician, emergency medical technician-intermediate, and paramedic. On and after December 31, 2025, emergency care provider includes advanced emergency medical technician, community paramedic, critical care paramedic, emergency medical responder, emergency medical technician, and paramedic.

Source: Laws 2007, LB463, § 492; Laws 2018, LB1034, § 15; R.S.Supp., 2018, § 38-1208; Laws 2020, LB1002, § 18.

Operative date November 14, 2020.

38-1207.01 Emergency medical technician practice of emergency medical care, defined.

Emergency medical technician practice of emergency medical care means care provided in accordance with the knowledge and skill acquired through successful completion of an approved program for an emergency medical

technician. Such care includes, but is not limited to, (1) all of the acts that an emergency medical responder can perform, and (2) simple invasive interventions, management and transportation of individuals, and nonvisualized intubation.

Source: Laws 2018, LB1034, § 13; Laws 2020, LB1002, § 20.
Operative date November 14, 2020.

38-1207.02 Emergency medical technician-intermediate practice of emergency medical care, defined.

Emergency medical technician-intermediate practice of emergency medical care means care provided in accordance with the knowledge and skill acquired through successful completion of an approved program for an emergency medical technician-intermediate. Such care includes, but is not limited to, (1) all of the acts that an advanced emergency medical technician can perform, and (2) visualized intubation. This section terminates on December 31, 2025.

Source: Laws 2018, LB1034, § 14; Laws 2020, LB1002, § 21.
Operative date November 14, 2020.

38-1208 Transferred to section 38-1206.04.

38-1208.01 Paramedic practice of emergency medical care, defined.

Paramedic practice of emergency medical care means care provided in accordance with the knowledge and skill acquired through successful completion of an approved program for a paramedic. Such care includes, but is not limited to, (1) all of the acts that an emergency medical technician-intermediate can perform, and (2) surgical cricothyrotomy.

Source: Laws 2018, LB1034, § 16; Laws 2020, LB1002, § 22.
Operative date November 14, 2020.

38-1208.02 Practice of emergency medical care, defined.

Practice of emergency medical care means the performance of any act using judgment or skill based upon the United States Department of Transportation education standards and guideline training requirements, the National Highway Traffic Safety Administration's National Emergency Medical Service Scope of Practice Model and National Emergency Medical Services Education Standards, an education program for a community paramedic or a critical care paramedic that is approved by the board and the Department of Health and Human Services, and permitted practices and procedures for the level of licensure listed in section 38-1217. Such acts include the identification of and intervention in actual or potential health problems of individuals and are directed toward addressing such problems based on actual or perceived traumatic or medical circumstances. Such acts are provided under therapeutic regimens ordered by a physician medical director or through protocols as provided by the Emergency Medical Services Practice Act.

Source: Laws 2018, LB1034, § 17; Laws 2020, LB1002, § 23.
Operative date November 14, 2020.

38-1209 Patient, defined.

Patient means an individual who either identifies himself or herself as being in need of medical attention or upon assessment by an emergency care provider has an injury or illness requiring treatment.

Source: Laws 2007, LB463, § 493; Laws 2020, LB1002, § 24.
Operative date November 14, 2020.

38-1210 Physician medical director, defined.

Physician medical director means a qualified physician who is responsible for the medical supervision of emergency care providers and verification of skill proficiency of emergency care providers pursuant to section 38-1217.

Source: Laws 2007, LB463, § 494; Laws 2020, LB1002, § 25.
Operative date November 14, 2020.

38-1211 Protocol, defined.

Protocol means a set of written policies, procedures, and directions from a physician medical director to an emergency care provider concerning the medical procedures to be performed in specific situations.

Source: Laws 2007, LB463, § 495; Laws 2020, LB1002, § 26.
Operative date November 14, 2020.

38-1213 Qualified physician surrogate, defined.

Qualified physician surrogate means a qualified, trained medical person designated by a qualified physician in writing to act as an agent for the physician in directing the actions or renewal of licensure of emergency care providers.

Source: Laws 2007, LB463, § 497; Laws 2020, LB1002, § 27.
Operative date November 14, 2020.

38-1215 Board; members; terms; meetings; removal.

(1) The board shall have seventeen members appointed by the Governor with the approval of a majority of the Legislature. The appointees may begin to serve immediately following appointment and prior to approval by the Legislature.

(2)(a) Seven members of the board shall be active emergency care providers at the time of and for the duration of their appointment, and each shall have at least five years of experience in his or her level of licensure at the time of his or her appointment or reappointment. Of the seven members who are emergency care providers, two shall be emergency medical responders, two shall be emergency medical technicians, one shall be an advanced emergency medical technician, and two shall be paramedics.

(b) Three of the members shall be qualified physicians actively involved in emergency medical care. At least one of the physician members shall be a board-certified emergency physician, and at least one of the physician members shall specialize in pediatrics.

(c) Five members shall be appointed to include one member who is a representative of an approved training agency, one member who is a physician assistant with at least five years of experience and active in emergency medical care education, one member who is a registered nurse with at least five years of experience and active in emergency medical care education, and two public

members who meet the requirements of section 38-165 and who have an expressed interest in the provision of emergency medical care.

(d) The remaining two members shall have any of the qualifications listed in subdivision (a), (b), or (c) of this subsection.

(e) In addition to any other criteria for appointment, among the members of the board appointed after January 1, 2017, there shall be at least three members who are volunteer emergency medical care providers, at least one member who is a paid emergency medical care provider, at least one member who is a firefighter, at least one member who is a law enforcement officer, and at least one member who is active in the Critical Incident Stress Management Program. If a person appointed to the board is qualified to serve as a member in more than one capacity, all qualifications of such person shall be taken into consideration to determine whether or not the diversity in qualifications required in this subsection has been met.

(f) At least five members of the board shall be appointed from each congressional district, and at least one of such members shall be a physician member described in subdivision (b) of this subsection.

(3) Members shall serve five-year terms beginning on December 1 and may serve for any number of such terms. The terms of the members of the board appointed prior to December 1, 2008, shall be extended by two years and until December 1 of such year. Each member shall hold office until the expiration of his or her term. Any vacancy in membership, other than by expiration of a term, shall be filled within ninety days by the Governor by appointment as provided in subsection (2) of this section.

(4) Special meetings of the board may be called by the department or upon the written request of any six members of the board explaining the reason for such meeting. The place of the meetings shall be set by the department.

(5) The Governor upon recommendation of the department shall have power to remove from office at any time any member of the board for physical or mental incapacity to carry out the duties of a board member, for continued neglect of duty, for incompetency, for acting beyond the individual member's scope of authority, for malfeasance in office, for any cause for which a professional credential may be suspended or revoked pursuant to the Uniform Credentialing Act, or for a lack of license required by the Emergency Medical Services Practice Act.

(6) Except as provided in subsection (5) of this section and notwithstanding subsection (2) of this section, a member of the board who changes his or her licensure classification after appointment or has a licensure classification which is terminated under section 38-1207.02 or 38-1217 when such licensure classification was a qualification for appointment shall be permitted to continue to serve as a member of the board until the expiration of his or her term.

Source: Laws 1997, LB 138, § 5; Laws 1998, LB 1073, § 146; Laws 2004, LB 821, § 18; R.S.Supp., 2006, § 71-5176; Laws 2007, LB463, § 499; Laws 2009, LB195, § 12; Laws 2016, LB952, § 1; Laws 2018, LB1034, § 18; Laws 2020, LB1002, § 28.
Operative date November 14, 2020.

Cross References

Critical Incident Stress Management Program, see section 71-7104.

38-1216 Board; duties.

In addition to any other responsibilities prescribed by the Emergency Medical Services Practice Act, the board shall:

- (1) Promote the dissemination of public information and education programs to inform the public about emergency medical service and other medical information, including appropriate methods of medical self-help, first aid, and the availability of emergency medical services training programs in the state;
- (2) Provide for the collection of information for evaluation of the availability and quality of emergency medical care, evaluate the availability and quality of emergency medical care, and serve as a focal point for discussion of the provision of emergency medical care;
- (3) Establish model procedures for patient management in medical emergencies that do not limit the authority of law enforcement and fire protection personnel to manage the scene during a medical emergency;
- (4) Not less than once each five years, undertake a review and evaluation of the act and its implementation together with a review of the emergency medical care needs of the residents of the State of Nebraska and submit electronically a report to the Legislature with any recommendations which it may have; and
- (5) Identify communication needs of emergency medical services and make recommendations for development of a communications plan for a communications network for emergency care providers and emergency medical services.

Source: Laws 1997, LB 138, § 6; R.S.1943, (2003), § 71-5177; Laws 2007, LB463, § 500; Laws 2012, LB782, § 38; Laws 2018, LB1034, § 19; Laws 2020, LB1002, § 29.
Operative date November 14, 2020.

38-1217 Rules and regulations.

The board shall adopt rules and regulations necessary to:

- (1) Create licensure requirements for advanced emergency medical technicians, community paramedics, critical care paramedics, emergency medical responders, emergency medical technicians, and paramedics and, until December 31, 2025, create renewal requirements for emergency medical technicians-intermediate. The rules and regulations shall include all criteria and qualifications for each classification determined to be necessary for protection of public health and safety;
- (2) Provide for temporary licensure of an emergency care provider who has completed the educational requirements for a licensure classification enumerated in subdivision (1) of this section but has not completed the testing requirements for licensure under such subdivision. A temporary license shall allow the person to practice only in association with a licensed emergency care provider under physician medical direction 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 expire immediately if the applicant has failed the examination. In no case may a temporary license be issued for a period extending beyond one year. 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) Provide for temporary licensure of an emergency care provider relocating to Nebraska, if such emergency care provider is lawfully authorized to practice in another state that has adopted the licensing standards of the EMS Personnel Licensure Interstate Compact. Such temporary licensure shall be valid for one year or until a license is issued and shall not be subject to renewal. The requirements of this subdivision do not apply to a temporary license issued as provided in section 38-129.01;

(4) 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;

(5) Authorize emergency medical services to provide differing practices and procedures depending upon the qualifications of 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;

(6) Authorize 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;

(7) Provide for the approval of training agencies, provide for disciplinary or corrective action against training agencies, and establish minimum standards for services provided by training agencies;

(8) Provide for the minimum qualifications of a physician medical director in addition to the licensure required by section 38-1212;

(9) 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 emergency care provider or emergency medical service before or after adoption;

(10) Establish renewal and reinstatement requirements for emergency care providers 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 emergency care providers shall allow reinstatement at the same or any lower level of licensure for which the emergency care provider is determined to be qualified;

(11) Create licensure, renewal, and reinstatement requirements for emergency medical service instructors. The rules and regulations shall include the practices and procedures for licensure, renewal, and reinstatement;

(12) Establish criteria for emergency medical technicians-intermediate, advanced emergency medical technicians, emergency medical technicians, community paramedics, critical care paramedics, or paramedics performing activities within their scope of practice and as determined by a licensed health care practitioner as defined in section 38-1224; and

(13) Establish model protocols for compliance with the Stroke System of Care Act by an emergency medical service and an emergency care provider.

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; Laws 2018, LB1034, § 20; Laws 2020, LB1002, § 30.
Operative date November 14, 2020.

Cross References

EMS Personnel Licensure Interstate Compact, see section 38-3801.

Stroke System of Care Act, see section 71-4201.

38-1218 Curricula for licensure classification; board; powers; military spouse; temporary license.

(1) The board may approve curricula for the licensure classifications listed in the Emergency Medical Services Practice Act.

(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 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 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) 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; Laws 2018, LB1034, § 21; Laws 2020, LB1002, § 31.
Operative date November 14, 2020.

38-1218.01 Decisions of Interstate Commission for Emergency Medical Services Personnel Practice; board; duties.

The board shall review decisions of the Interstate Commission for Emergency Medical Services Personnel Practice established pursuant to the EMS Personnel Licensure Interstate Compact. Upon approval by the commission of any action that will have the result of increasing the cost to the state for membership in the compact, the board may recommend to the Legislature that Nebraska withdraw from the compact.

Source: Laws 2018, LB1034, § 22.

Cross References

EMS Personnel Licensure Interstate Compact, see section 38-3801.

38-1219 Department; additional rules and regulations.

The department, with the recommendation of the board, shall adopt and promulgate rules and regulations necessary to:

- (1) Administer the Emergency Medical Services Practice Act;
- (2) Establish procedures and requirements for applications for licensure, renewal, and reinstatement in any of the licensure classifications created pursuant to the Emergency Medical Services Practice Act;
- (3) Provide for the inspection, review, and termination of approval of training agencies. All training for licensure shall be provided through an approved training agency; and
- (4) Provide for the inspection, review, and termination of basic life support emergency medical services and advanced life support emergency medical services.

Source: Laws 2007, LB463, § 503; Laws 2009, LB195, § 15; Laws 2018, LB1034, § 23.

38-1220 Act; exemptions.

The following are exempt from the licensing requirements of the Emergency Medical Services Practice Act:

- (1) The occasional use of a vehicle or aircraft not designated as an ambulance and not ordinarily used in transporting patients or operating emergency care, rescue, or resuscitation services;
- (2) Vehicles or aircraft rendering services as an ambulance in case of a major catastrophe or emergency when licensed ambulances based in the localities of the catastrophe or emergency are incapable of rendering the services required;
- (3) Ambulances from another state which are operated from a location or headquarters outside of this state in order to transport patients across state lines, but no such ambulance shall be used to pick up patients within this state for transportation to locations within this state except in case of an emergency;
- (4) Ambulances or emergency vehicles owned and operated by an agency of the United States Government and the personnel of such agency;
- (5) Except for the provisions of section 38-1232, physicians, physician assistants, registered nurses, or advanced practice registered nurses, who hold current Nebraska licenses and are exclusively engaged in the practice of their respective professions;
- (6) Persons authorized to perform emergency care in other states when incidentally working in Nebraska in response to an emergency situation; and

(7) Students under the supervision of (a) a licensed emergency care provider performing emergency medical services that are an integral part of the training provided by an approved training agency or (b) an organization accredited by the Commission on Accreditation of Allied Health Education Programs for the level of training the student is completing.

Source: Laws 1997, LB 138, § 20; Laws 2000, LB 1115, § 76; Laws 2005, LB 256, § 94; R.S.Supp.,2006, § 71-5191; Laws 2007, LB463, § 504; Laws 2019, LB135, § 1; Laws 2020, LB1002, § 32.
Operative date November 14, 2020.

38-1221 License; requirements.

To be eligible for a license under the Emergency Medical Services Practice Act, an individual shall have attained the age of eighteen years and met the requirements established in accordance with section 38-1217.

Source: Laws 2007, LB463, § 505; Laws 2009, LB195, § 16; Laws 2016, LB722, § 11; Laws 2018, LB1034, § 24.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-1224 Duties and activities authorized; limitations.

(1) An emergency care provider other than an emergency medical responder may not assume the duties incident to the title or practice the skills of an emergency care provider unless he or she is acting under the supervision of a licensed health care practitioner.

(2) An emergency care provider may only practice the skills he or she is authorized to employ and which are covered by the license issued to such provider pursuant to the Emergency Medical Services Practice Act or as authorized pursuant to the EMS Personnel Licensure Interstate Compact.

(3) A registered nurse may provide for the direction of an emergency care provider in any setting other than an emergency medical service.

(4) For purposes of this section, licensed health care practitioner means (a) a physician medical director or physician surrogate for purposes of supervision of an emergency care provider for an emergency medical service or (b) a physician, a physician assistant, or an advanced practice registered nurse for purposes of supervision of an emergency care provider in a setting other than an emergency medical service.

Source: Laws 1997, LB 138, § 13; Laws 1998, LB 1073, § 147; Laws 2002, LB 1033, § 2; R.S.1943, (2003), § 71-5184; Laws 2007, LB463, § 508; Laws 2009, LB195, § 17; Laws 2018, LB1034, § 25; Laws 2020, LB1002, § 33.
Operative date November 14, 2020.

Cross References

EMS Personnel Licensure Interstate Compact, see section 38-3801.

38-1225 Patient data; confidentiality; immunity.

(1) No patient data received or recorded by an emergency medical service or an emergency care provider shall be divulged, made public, or released by an emergency medical service or an emergency care provider, except that patient

data may be released for purposes of treatment, payment, and other health care operations as defined and permitted under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2018, or as otherwise permitted by law. Such data shall be provided to the department for public health purposes pursuant to rules and regulations of the department. For purposes of this section, patient data means any data received or recorded as part of the records maintenance requirements of the Emergency Medical Services Practice Act.

(2) Patient data received by the department shall be confidential with release only (a) in aggregate data reports created by the department on a periodic basis or at the request of an individual, (b) as case-specific data to approved researchers for specific research projects, (c) as protected health information to a public health authority, as such terms are defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2018, and (d) as protected health information, as defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2018, to an emergency medical service, to an emergency care provider, or to a licensed health care facility for purposes of treatment. A record may be shared with the emergency medical service or emergency care provider that reported that specific record. Approved researchers shall maintain the confidentiality of the data, and researchers shall be approved in the same manner as described in section 81-666. Aggregate reports shall be public documents.

(3) No civil or criminal liability of any kind or character for damages or other relief or penalty shall arise or be enforced against any person or organization by reason of having provided patient data pursuant to this section.

Source: Laws 1997, LB 138, § 14; Laws 2003, LB 667, § 11; R.S.1943, (2003), § 71-5185; Laws 2007, LB185, § 42; Laws 2007, LB463, § 509; Laws 2018, LB1034, § 26; Laws 2020, LB1002, § 34.
Operative date November 14, 2020.

38-1226 Ambulance; transportation requirements.

No ambulance shall transport any patient upon any street, road, highway, airspace, or public way in the State of Nebraska unless such ambulance, when so transporting patients, is occupied by at least one licensed emergency care provider. Such requirement shall be met if any of the individuals providing the service is a licensed physician, registered nurse, or licensed physician assistant functioning within the scope of practice of his or her license.

Source: Laws 1997, LB 138, § 15; R.S.1943, (2003), § 71-5186; Laws 2007, LB463, § 510; Laws 2020, LB1002, § 35.
Operative date November 14, 2020.

38-1228 Department; waive rule, regulation, or standard; when.

The department, with the approval of the board, may, whenever it deems appropriate, waive any rule, regulation, or standard relating to the licensure of emergency medical services or emergency care providers when the lack of a licensed emergency medical service in a municipality or other area will create

an undue hardship in the municipality or other area in meeting the emergency medical service needs of the residents thereof.

Source: Laws 1997, LB 138, § 17; R.S.1943, (2003), § 71-5188; Laws 2007, LB463, § 512; Laws 2020, LB1002, § 36.
Operative date November 14, 2020.

38-1229 License; person on national registry.

The department may issue a license to any individual who has a current certificate from the National Registry of Emergency Medical Technicians.

Source: Laws 1997, LB 138, § 18; R.S.1943, (2003), § 71-5189; Laws 2007, LB463, § 513; Laws 2018, LB1034, § 27.

38-1232 Individual liability.

(1) No emergency care provider, physician assistant, registered nurse, or licensed practical nurse who provides public emergency care shall be liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising out of and in the course of his or her rendering in good faith any such care. Nothing in this subsection shall be deemed to grant any such immunity for liability arising out of the operation of any motor vehicle, aircraft, or boat or while such person was impaired by alcoholic liquor or any controlled substance enumerated in section 28-405 in connection with such care, nor shall immunity apply to any person causing damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission.

(2) No qualified physician or qualified physician surrogate who gives orders, either orally or by communication equipment, to any emergency care provider at the scene of an emergency, no emergency care provider following such orders within the limits of his or her licensure, and no emergency care provider trainee in an approved training program following such orders, shall be liable civilly or criminally by reason of having issued or followed such orders but shall be subject to the rules of law applicable to negligence.

(3) No physician medical director shall incur any liability by reason of his or her use of any unmodified protocol, standing order, operating procedure, or guideline provided by the board pursuant to subdivision (9) of section 38-1217.

Source: Laws 1997, LB 138, § 23; R.S.1943, (2003), § 71-5194; Laws 2007, LB463, § 516; Laws 2009, LB195, § 18; Laws 2018, LB1034, § 28; Laws 2020, LB1002, § 37.
Operative date November 14, 2020.

38-1233 Emergency care provider; liability relating to consent.

No emergency care provider shall be subject to civil liability based solely upon failure to obtain consent in rendering emergency medical, surgical, hospital, or health services to any individual regardless of age when the patient is unable to give his or her consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care.

Source: Laws 1997, LB 138, § 24; R.S.1943, (2003), § 71-5195; Laws 2007, LB463, § 517; Laws 2020, LB1002, § 38.
Operative date November 14, 2020.

38-1234 Emergency care provider; liability within scope of practice.

No act of commission or omission of any emergency care provider while rendering emergency medical care within the limits of his or her licensure or status as a trainee to a person who is deemed by the provider to be in immediate danger of injury or loss of life shall impose any liability on any other person, and this section shall not relieve the emergency care provider from personal liability, if any.

Source: Laws 1997, LB 138, § 25; R.S.1943, (2003), § 71-5196; Laws 2007, LB463, § 518; Laws 2020, LB1002, § 39.
Operative date November 14, 2020.

38-1237 Prohibited acts.

It shall be unlawful for any person who has not been licensed pursuant to the Emergency Medical Services Practice Act or authorized pursuant to the EMS Personnel Licensure Interstate Compact to hold himself or herself out as an emergency care provider, to use any other term to indicate or imply that he or she is an emergency care provider, or to act as such a provider without a license therefor. It shall be unlawful for any person to operate a training agency for the initial training or renewal or reinstatement of licensure of emergency care providers unless the training agency is approved pursuant to rules and regulations of the department. It shall be unlawful for any person to operate an emergency medical service unless such service is licensed.

Source: Laws 1997, LB 138, § 28; R.S.1943, (2003), § 71-5199; Laws 2007, LB463, § 521; Laws 2018, LB1034, § 29; Laws 2020, LB1002, § 40.
Operative date November 14, 2020.

Cross References

EMS Personnel Licensure Interstate Compact, see section 38-3801.

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.

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.

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.

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.

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.

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.

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.

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.

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.
- 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.

ARTICLE 17

MESSAGE THERAPY PRACTICE ACT

Section

- 38-1701. Act, how cited.
- 38-1702. Definitions, where found.
- 38-1707. Massage therapy establishment, defined.
- 38-1707.01. Mobile massage therapy establishment, defined.
- 38-1711. Massage therapy; temporary license; requirements; applicability of section.
- 38-1712. Reciprocity; military spouse; temporary license.

§ 38-1701**HEALTH OCCUPATIONS AND PROFESSIONS**

Section

- 38-1715. Transferred to section 38-1725.
38-1716. Massage therapy establishment; license required.
38-1717. Mobile massage therapy establishment; applicant; requirements.
38-1718. Mobile massage therapy establishment; application; floor plan or blue-print.
38-1719. Mobile massage therapy establishment; application; review; denial; inspection; issuance of permanent license.
38-1720. Mobile massage therapy establishment; operation; requirements.
38-1721. Mobile massage therapy establishment license; renewal; procedure; insurance.
38-1722. Mobile massage therapy establishment license revoked or expired; not reinstated.
38-1723. Mobile massage therapy establishment license; change of ownership or mobile unit; effect.
38-1724. Mobile massage therapy establishment; owner; duties.
38-1725. Rules and regulations.

38-1701 Act, how cited.

Sections 38-1701 to 38-1725 shall be known and may be cited as the Massage Therapy Practice Act.

Source: Laws 2007, LB463, § 608; Laws 2019, LB244, § 1.

38-1702 Definitions, where found.

For purposes of the Massage Therapy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1703 to 38-1707.01 apply.

Source: Laws 1955, c. 273, § 1, p. 861; Laws 1987, LB 473, § 42; R.S.Supp.,1987, § 71-2701; Laws 1988, LB 1100, § 132; Laws 1990, LB 1064, § 14; Laws 1991, LB 10, § 2; Laws 1993, LB 48, § 2; Laws 1999, LB 828, § 142; Laws 2003, LB 242, § 69; R.S.1943, (2003), § 71-1,278; Laws 2007, LB463, § 609; Laws 2019, LB244, § 2.

38-1707 Massage therapy establishment, defined.

Massage therapy establishment means any duly licensed place in which a massage therapist practices his or her profession of massage therapy. Massage therapy establishment includes a mobile massage therapy establishment.

Source: Laws 2007, LB463, § 614; Laws 2019, LB244, § 3.

38-1707.01 Mobile massage therapy establishment, defined.

Mobile massage therapy establishment means a self-contained, self-supporting, enclosed mobile unit licensed under the Massage Therapy Practice Act as a mobile site for the performance of the practices of massage therapy by persons licensed under the act.

Source: Laws 2019, LB244, § 4.

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.

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.

38-1715 Transferred to section 38-1725.

38-1716 Massage therapy establishment; license required.

No person shall operate or profess or attempt to operate a massage therapy establishment unless such establishment is licensed by the department under the Massage Therapy Practice Act. The department shall not issue or renew a license for a massage therapy establishment until all requirements of the act have been complied with. No person shall engage in any of the practices of massage therapy in any location or premises other than a licensed massage therapy establishment except as specifically permitted in the act.

Source: Laws 2019, LB244, § 5.

38-1717 Mobile massage therapy establishment; applicant; requirements.

In order to be licensed as a mobile massage therapy establishment by the department, an applicant shall meet the following requirements:

- (1) The proposed establishment is a self-contained, self-supporting, enclosed mobile unit;
- (2) The establishment has an automobile insurance liability policy which meets the requirements of the department for the mobile unit;
- (3) The establishment is clearly identified as such to the public by a sign placed on the outside of the establishment which includes the establishment's license number;

(4) The establishment complies with the sanitary requirements of the Massage Therapy Practice Act and the rules and regulations adopted and promulgated by the department under the act;

(5) The entrance into the proposed establishment used by the general public provides safe access by the public;

(6) The proposed establishment has at least forty-four square feet of floor space. If more than one practitioner is to be employed in the establishment at the same time, the establishment shall contain an additional space of at least fifty square feet for each additional practitioner; and

(7) The proposed establishment includes a functional sink and toilet facilities and maintains an adequate supply of clean water and wastewater storage capacity.

Source: Laws 2019, LB244, § 6.

38-1718 Mobile massage therapy establishment; application; floor plan or blueprint.

Any person seeking a license to operate a mobile massage therapy establishment shall submit a completed application to the department, and along with the application, the applicant shall submit a detailed floor plan or blueprint of the proposed establishment sufficient to demonstrate compliance with the requirements of section 38-1717.

Source: Laws 2019, LB244, § 7.

38-1719 Mobile massage therapy establishment; application; review; denial; inspection; issuance of permanent license.

Each application for a license to operate a mobile massage therapy establishment shall be reviewed by the department for compliance with the requirements of the Massage Therapy Practice Act and the rules and regulations adopted and promulgated by the department under the act. If an application is denied, the applicant shall be informed in writing of the grounds for denial, and such denial shall not prejudice future applications by the applicant. If an application is approved, the department shall issue the applicant a certificate of consideration to operate a mobile massage therapy establishment. The department shall conduct an operation inspection of each establishment issued a certificate of consideration within six months after the issuance of such certificate. An establishment which passes the inspection shall be issued a permanent license. An establishment which fails the inspection shall submit within fifteen days evidence of corrective action taken to improve those aspects of operation found deficient. If evidence is not submitted within fifteen days or if after a second inspection the establishment does not receive a satisfactory rating, it shall immediately relinquish its certificate of consideration and cease operation.

Source: Laws 2019, LB244, § 8.

38-1720 Mobile massage therapy establishment; operation; requirements.

In order to maintain its license in good standing, each mobile massage therapy establishment shall operate in accordance with the following requirements:

(1) The establishment shall at all times comply with all applicable provisions of the Massage Therapy Practice Act and all rules and regulations adopted and promulgated under the act;

(2) The establishment owner or his or her agent shall notify the department of any change of ownership, name, or office address and if an establishment is permanently closed;

(3) No establishment shall permit any unlicensed person to perform any of the practices of massage therapy within its confines or employment;

(4) The establishment shall display a name upon, over, or near the entrance door distinguishing it as a mobile massage therapy establishment;

(5) The establishment shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the establishment, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the establishment, all personnel, and all records requested by the inspector;

(6) The establishment shall display in a conspicuous place the following records:

(a) The current license or certificate of consideration to operate an establishment;

(b) The current licenses of all persons licensed under the act who are employed by or working in the establishment; and

(c) The rating sheet from the most recent operation inspection;

(7) At no time shall an establishment employ more employees than permitted by the square footage requirements of the Massage Therapy Practice Act;

(8) No massage therapy services may be performed in an establishment while the establishment is moving. The establishment must be safely and legally parked in a legal parking space at all times while clients are present inside the establishment. An establishment shall not park or conduct business within three hundred feet of another brick and mortar licensed massage therapy establishment. The department is not responsible for monitoring for enforcement of this subdivision but may discipline a license for a reported and verified violation;

(9) The owner of the establishment shall maintain a permanent business address at which correspondence from the department may be received and records of appointments, license numbers, and vehicle identification numbers shall be kept for each establishment being operated by the owner. The owner shall make such records available for verification and inspection by the department; and

(10) The establishment shall not knowingly permit its employees or clients to use, consume, serve, or in any manner possess or distribute intoxicating beverages or controlled substances upon its premises.

Source: Laws 2019, LB244, § 9.

38-1721 Mobile massage therapy establishment license; renewal; procedure; insurance.

The procedure for renewing a mobile massage therapy establishment license shall be in accordance with section 38-143, except that in addition to all other requirements, the establishment shall submit evidence of minimal property damage, bodily injury, and liability insurance coverage for the establishment

and evidence of coverage which meets the requirements of the Motor Vehicle Registration Act for the establishment.

Source: Laws 2019, LB244, § 10.

Cross References

Motor Vehicle Registration Act, see section 60-301.

38-1722 Mobile massage therapy establishment license revoked or expired; not reinstated.

The license of a mobile massage therapy establishment that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such establishment may reopen for business.

Source: Laws 2019, LB244, § 11.

38-1723 Mobile massage therapy establishment license; change of ownership or mobile unit; effect.

Each mobile massage therapy establishment license issued shall be in effect solely for the owner or owners and the mobile unit named thereon and shall expire automatically upon any change of ownership or mobile unit. An original application for licensure shall be submitted and approved before such establishment may reopen for business.

Source: Laws 2019, LB244, § 12.

38-1724 Mobile massage therapy establishment; owner; duties.

The owner of each mobile massage therapy establishment shall have full responsibility for ensuring that the establishment is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the establishment.

Source: Laws 2019, LB244, § 13.

38-1725 Rules and regulations.

The department may adopt and promulgate rules and regulations as it may deem necessary with reference to the conditions under which the practice of massage therapy shall be carried on and the precautions necessary to be employed to prevent the spread of infectious and contagious diseases, other than the practice of massage in mobile massage therapy establishments. The department may, if it deems necessary, adopt and promulgate rules and regulations related to mobile massage therapy establishments. The department shall have the power to enforce the Massage Therapy Practice Act and all necessary inspections in connection therewith.

Source: Laws 2007, LB463, § 622; R.S.1943, (2016), § 38-1715; Laws 2019, LB244, § 14.

ARTICLE 18

MEDICAL NUTRITION THERAPY PRACTICE ACT

Section

38-1813. Licensed medical nutrition therapist; qualifications; practice; limitations.

38-1814. Reciprocity; military spouse; temporary license.

38-1813 Licensed medical nutrition therapist; qualifications; practice; limitations.

(1) A person shall be qualified to be a licensed medical nutrition therapist if such person furnishes evidence that he or she:

(a) Has met the requirements for and is a registered dietitian by the American Dietetic Association or an equivalent entity recognized by the board;

(b)(i) Has satisfactorily passed an examination approved by the board;

(ii) Has received a baccalaureate degree from an accredited college or university with a major course of study in human nutrition, food and nutrition, dietetics, or an equivalent major course of study approved by the board; and

(iii) Has satisfactorily completed a program of supervised clinical experience approved by the department. Such clinical experience shall consist of not less than nine hundred hours of a planned continuous experience in human nutrition, food and nutrition, or dietetics under the supervision of an individual meeting the qualifications of this section; or

(c)(i) Has satisfactorily passed an examination approved by the board; and

(ii)(A) Has received a master's or doctorate degree from an accredited college or university in human nutrition, nutrition education, food and nutrition, or public health nutrition or in an equivalent major course of study approved by the board; or

(B) Has received a master's or doctorate degree from an accredited college or university which includes a major course of study in clinical nutrition. Such course of study shall consist of not less than a combined two hundred hours of biochemistry and physiology and not less than seventy-five hours in human nutrition.

(2) For purposes of this section, accredited college or university means an institution currently listed with the United States Secretary of Education as accredited. Applicants who have obtained their education outside of the United States and its territories shall have their academic degrees validated as equivalent to a baccalaureate or master's degree conferred by a United States regionally accredited college or university.

(3)(a) The practice of medical nutrition therapy shall be performed under the consultation of a physician licensed pursuant to section 38-2026 or sections 38-2029 to 38-2033.

(b) A licensed medical nutrition therapist may order patient diets, including therapeutic diets, in accordance with this subsection.

Source: Laws 1988, LB 557, § 5; Laws 1995, LB 406, § 24; R.S.1943, (2003), § 71-1,289; Laws 2007, LB463, § 635; Laws 2020, LB1002, § 41.

Operative date November 14, 2020.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

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.

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.

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.

ARTICLE 20

MEDICINE AND SURGERY PRACTICE ACT

Section

- 38-2001. Act, how cited.
- 38-2002. Definitions, where found.
- 38-2008. Approved program, defined.
- 38-2014. Physician assistant, defined.
- 38-2014.01. Physician group, defined.
- 38-2017. Supervising physician, defined.
- 38-2018. Supervision, defined.
- 38-2021. Unprofessional conduct, defined.
- 38-2023. Board; membership; qualifications.
- 38-2025. Medicine and surgery; practice; persons excepted.
- 38-2026. Medicine and surgery; license; qualifications; foreign medical graduates; requirements.
- 38-2028. Reciprocity; requirements; military spouse; temporary license.
- 38-2034. Applicant; reciprocity; requirements; military spouse; temporary license.
- 38-2046. Physician assistants; legislative findings.
- 38-2047. Physician assistants; services performed; supervision requirements.
- 38-2049. Physician assistants; licenses; temporary licenses; issuance; military spouse; temporary license.
- 38-2050. Physician assistants; supervision; supervising physician; requirements; collaborative agreement.
- 38-2053. Physician assistants; negligent acts; liability.
- 38-2054. Physician assistants; licensed; not engaged in unauthorized practice of medicine.
- 38-2055. Physician assistants; prescribe drugs and devices; restrictions; therapeutic regimen; powers.
- 38-2056. Physician Assistant Committee; created; membership; powers and duties; per diem; expenses.
- 38-2058. Acupuncture; license required; standard of care.
- 38-2063. Repealed. Laws 2019, LB29, § 5.

38-2001 Act, how cited.

Sections 38-2001 to 38-2062 shall be known and may be cited as the Medicine and Surgery Practice Act.

Source: Laws 2007, LB463, § 659; Laws 2009, LB394, § 1; Laws 2011, LB406, § 1; Laws 2018, LB701, § 5; Laws 2019, LB29, § 3; Laws 2020, LB755, § 3.
Effective date November 14, 2020.

38-2002 Definitions, where found.

For the purposes of the Medicine and Surgery Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2003 to 38-2022 apply.

Source: Laws 1969, c. 560, § 7, p. 2283; Laws 1971, LB 150, § 4; Laws 1989, LB 342, § 17; Laws 1996, LB 1044, § 425; Laws 1999, LB 828, § 83; R.S.1943, (2003), § 71-1,107.01; Laws 2007, LB463, § 660; Laws 2020, LB755, § 4.
Effective date November 14, 2020.

38-2008 Approved program, defined.

Approved program means a program for the education of physician assistants which is accredited by the Accreditation Review Commission on Education for the Physician Assistant or its predecessor or successor agency and which the board formally approves.

Source: Laws 2007, LB463, § 666; Laws 2009, LB195, § 37; Laws 2020, LB755, § 5.
Effective date November 14, 2020.

38-2014 Physician assistant, defined.

Physician assistant means any person who graduates from an approved program, who has passed a proficiency examination, and who the department, with the recommendation of the board, approves to perform medical services under a collaborative agreement with the supervision of a physician or under a collaborative agreement with the supervision of a podiatrist as provided by section 38-3013.

Source: Laws 1973, LB 101, § 2; R.S.Supp.,1973, § 85-179.05; Laws 1985, LB 132, § 2; Laws 1993, LB 316, § 1; Laws 1996, LB 1044, § 436; Laws 1996, LB 1108, § 8; Laws 1999, LB 828, § 92; Laws 2001, LB 209, § 8; R.S.1943, (2003), § 71-1,107.16; Laws 2007, LB296, § 338; Laws 2007, LB463, § 672; Laws 2009, LB195, § 38; Laws 2020, LB755, § 6.
Effective date November 14, 2020.

38-2014.01 Physician group, defined.

Physician group means two or more physicians practicing medicine within or employed by the same business entity.

Source: Laws 2020, LB755, § 7.
Effective date November 14, 2020.

38-2017 Supervising physician, defined.

Supervising physician means a licensed physician who supervises a physician assistant under a collaborative agreement.

Source: Laws 2007, LB463, § 675; Laws 2009, LB195, § 40; Laws 2020, LB755, § 8.
Effective date November 14, 2020.

38-2018 Supervision, defined.

Supervision means the ready availability of the supervising physician for consultation and collaboration on the activities of the physician assistant.

Source: Laws 2007, LB463, § 676; Laws 2009, LB195, § 41; Laws 2020, LB755, § 9.
Effective date November 14, 2020.

38-2021 Unprofessional conduct, defined.

Unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of medicine and surgery or the ethics of the profession, regardless of whether a person, patient, or entity is

injured, or conduct that is likely to deceive or defraud the public or is detrimental to the public interest, including, but not limited to:

(1) Performance by a physician of an abortion as defined in subdivision (1) of section 28-326 under circumstances when he or she will not be available for a period of at least forty-eight hours for postoperative care unless such postoperative care is delegated to and accepted by another physician;

(2) Performing an abortion upon a minor without having satisfied the requirements of sections 71-6901 to 71-6911;

(3) The intentional and knowing performance of a partial-birth abortion as defined in subdivision (8) of section 28-326, unless such procedure is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself; and

(4) Performance by a physician of an abortion in violation of the Pain-Capable Unborn Child Protection Act.

Source: Laws 2007, LB463, § 679; Laws 2010, LB594, § 16; Laws 2010, LB1103, § 12; Laws 2011, LB690, § 1; Laws 2020, LB814, § 10. Effective date November 14, 2020.

Cross References

Pain-Capable Unborn Child Protection Act, see section 28-3,102.

38-2023 Board; membership; qualifications.

The board shall consist of eight members, including at least two public members. Two of the six professional members of the board shall be officials or members of the instructional staff of an accredited medical school in this state. One of the six professional members of the board shall be a person who has a license to practice osteopathic medicine and surgery in this state. Beginning December 1, 2020, one of the six professional members of the board shall be a physician with experience in practice with physician assistants.

Source: Laws 2007, LB463, § 681; Laws 2020, LB755, § 10. Effective date November 14, 2020.

38-2025 Medicine and surgery; practice; persons excepted.

The following classes of persons shall not be construed to be engaged in the unauthorized practice of medicine:

(1) Persons rendering gratuitous services in cases of emergency;

(2) Persons administering ordinary household remedies;

(3) The members of any church practicing its religious tenets, except that they shall not prescribe or administer drugs or medicines, perform surgical or physical operations, nor assume the title of or hold themselves out to be physicians, and such members shall not be exempt from the quarantine laws of this state;

(4) Students of medicine who are studying in an accredited school or college of medicine and who gratuitously prescribe for and treat disease under the supervision of a licensed physician;

(5) Physicians who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States

Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(6) Physicians who are licensed in good standing to practice medicine under the laws of another state when incidentally called into this state or contacted via electronic or other medium for consultation with a physician licensed in this state. For purposes of this subdivision, consultation means evaluating the medical data of the patient as provided by the treating physician and rendering a recommendation to such treating physician as to the method of treatment or analysis of the data. The interpretation of a radiological image by a physician who specializes in radiology is not a consultation;

(7) Physicians who are licensed in good standing to practice medicine in another state but who, from such other state, order diagnostic or therapeutic services on an irregular or occasional basis, to be provided to an individual in this state, if such physicians do not maintain and are not furnished for regular use within this state any office or other place for the rendering of professional services or the receipt of calls;

(8) Physicians who are licensed in good standing to practice medicine in another state and who, on an irregular and occasional basis, are granted temporary hospital privileges to practice medicine and surgery at a hospital or other medical facility licensed in this state;

(9) Persons providing or instructing as to use of braces, prosthetic appliances, crutches, contact lenses, and other lenses and devices prescribed by a physician licensed to practice medicine while working under the direction of such physician;

(10) Dentists practicing their profession when licensed and practicing in accordance with the Dentistry Practice Act;

(11) Optometrists practicing their profession when licensed and practicing under and in accordance with the Optometry Practice Act;

(12) Osteopathic physicians practicing their profession if licensed and practicing under and in accordance with sections 38-2029 to 38-2033;

(13) Chiropractors practicing their profession if licensed and practicing under the Chiropractic Practice Act;

(14) Podiatrists practicing their profession when licensed to practice in this state and practicing under and in accordance with the Podiatry Practice Act;

(15) Psychologists practicing their profession when licensed to practice in this state and practicing under and in accordance with the Psychology Interjurisdictional Compact or the Psychology Practice Act;

(16) Advanced practice registered nurses practicing in their clinical specialty areas when licensed under the Advanced Practice Registered Nurse Practice Act and practicing under and in accordance with their respective practice acts;

(17) Surgical first assistants practicing in accordance with the Surgical First Assistant Practice Act;

(18) Persons licensed or certified under the laws of this state to practice a limited field of the healing art, not specifically named in this section, when confining themselves strictly to the field for which they are licensed or certified, not assuming the title of physician, surgeon, or physician and surgeon, and not professing or holding themselves out as qualified to prescribe drugs in any form or to perform operative surgery;

(19) Persons obtaining blood specimens while working under an order of or protocols and procedures approved by a physician, registered nurse, or other independent health care practitioner licensed to practice by the state if the scope of practice of that practitioner permits the practitioner to obtain blood specimens;

(20) Physicians who are licensed in good standing to practice medicine under the laws of another state or jurisdiction who accompany an athletic team or organization into this state for an event from the state or jurisdiction of licensure. This exemption is limited to treatment provided to such athletic team or organization while present in Nebraska;

(21) Persons who are not licensed, certified, or registered under the Uniform Credentialing Act, to whom are assigned tasks by a physician or osteopathic physician licensed under the Medicine and Surgery Practice Act, if such assignment of tasks is in a manner consistent with accepted medical standards and appropriate to the skill and training, on the job or otherwise, of the persons to whom the tasks are assigned. For purposes of this subdivision, assignment of tasks means the routine care, activities, and procedures that (a) are part of the routine functions of such persons who are not so licensed, certified, or registered, (b) reoccur frequently in the care of a patient or group of patients, (c) do not require such persons who are not so licensed, certified, or registered to exercise independent clinical judgment, (d) do not require the performance of any complex task, (e) have results which are predictable and have minimal potential risk, and (f) utilize a standard and unchanging procedure; and

(22) Other trained persons employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act or clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act to withdraw human blood for scientific or medical purposes.

Any person who has held or applied for a license to practice medicine and surgery in this state, and such license or application has been denied or such license has been refused renewal or disciplined by order of limitation, suspension, or revocation, shall be ineligible for the exceptions described in subdivisions (5) through (8) of this section until such license or application is granted or such license is renewed or reinstated. Every act or practice falling within the practice of medicine and surgery as defined in section 38-2024 and not specially excepted in this section shall constitute the practice of medicine and surgery and may be performed in this state only by those licensed by law to practice medicine in Nebraska.

Source: Laws 1927, c. 167, § 101, p. 482; C.S.1929, § 71-1402; Laws 1943, c. 150, § 19, p. 547; R.S.1943, § 71-1,103; Laws 1961, c. 337, § 12, p. 1056; Laws 1969, c. 563, § 2, p. 2291; Laws 1969, c. 564, § 1, p. 2297; Laws 1971, LB 150, § 1; Laws 1984, LB 724, § 1; Laws 1989, LB 342, § 15; Laws 1991, LB 2, § 11; Laws 1992, LB 291, § 17; Laws 1992, LB 1019, § 40; Laws 1994, LB 1210, § 55; Laws 1996, LB 414, § 3; Laws 1996, LB 1044, § 420; Laws 1997, LB 452, § 2; Laws 1999, LB 366, § 9; Laws 1999, LB 828, § 78; Laws 2000, LB 819, § 86; Laws 2000, LB 1115, § 14; Laws 2002, LB 1062, § 17; Laws 2005, LB 256, § 23; Laws 2006, LB 833, § 3; R.S.Supp.,2006, § 71-1,103; Laws 2007, LB463,

§ 683; Laws 2016, LB721, § 20; Laws 2018, LB1034, § 30; Laws 2020, LB783, § 1.

Effective date November 14, 2020.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.

Chiropractic Practice Act, see section 38-801.

Dentistry Practice Act, see section 38-1101.

Health Care Facility Licensure Act, see section 71-401.

Optometry Practice Act, see section 38-2601.

Podiatry Practice Act, see section 38-3001.

Psychology Interjurisdictional Compact, see section 38-3901.

Psychology Practice Act, see section 38-3101.

Surgical First Assistant Practice Act, see section 38-3501.

38-2026 Medicine and surgery; license; qualifications; foreign medical graduates; requirements.

Except as otherwise provided in sections 38-2026.01 and 38-2027, each applicant for a license to practice medicine and surgery shall:

(1)(a) Present proof that he or she is a graduate of an accredited school or college of medicine, (b) if a foreign medical graduate, provide a copy of a permanent certificate issued by the Educational Commission for Foreign Medical Graduates that is currently effective and relates to such applicant or provide such credentials as are necessary to certify that such foreign medical graduate has successfully passed the Visa Qualifying Examination or its successor or equivalent examination required by the United States Department of Health and Human Services and the United States Citizenship and Immigration Services, or (c) if a graduate of a foreign medical school who has successfully completed a program of American medical training designated as the Fifth Pathway and who additionally has successfully passed the Educational Commission for Foreign Medical Graduates examination but has not yet received the permanent certificate attesting to the same, provide such credentials as certify the same to the Division of Public Health of the Department of Health and Human Services;

(2) Present proof that he or she has served at least one year of graduate medical education approved by the board or, if a foreign medical graduate, present proof that he or she has served at least two years of graduate medical education approved by the board;

(3) Pass a licensing examination approved by the board covering appropriate medical subjects; and

(4) Present proof satisfactory to the department that he or she, within the three years immediately preceding the application for licensure, (a) has been in the active practice of the profession of medicine and surgery in some other state, a territory, the District of Columbia, or Canada for a period of one year, (b) has had at least one year of graduate medical education as described in subdivision (2) of this section, (c) has completed continuing education in medicine and surgery approved by the board, (d) has completed a refresher course in medicine and surgery approved by the board, or (e) has completed the special purposes examination approved by the board.

Source: Laws 1927, c. 167, § 102, p. 483; C.S.1929, § 71-1403; Laws 1943, c. 150, § 20, p. 548; R.S.1943, § 71-1,104; Laws 1963, c. 408, § 6, p. 1312; Laws 1969, c. 563, § 3, p. 2293; Laws 1971, LB 150, § 2; Laws 1975, LB 92, § 3; Laws 1976, LB 877, § 25;

Laws 1978, LB 761, § 1; Laws 1985, LB 250, § 13; Laws 1987, LB 390, § 1; Laws 1990, LB 1064, § 13; Laws 1991, LB 400, § 22; Laws 1994, LB 1210, § 56; Laws 1994, LB 1223, § 14; Laws 1996, LB 1044, § 421; Laws 1999, LB 828, § 79; Laws 2002, LB 1062, § 18; Laws 2003, LB 242, § 39; R.S.1943, (2003), § 71-1,104; Laws 2007, LB296, § 332; Laws 2007, LB463, § 684; Laws 2011, LB406, § 2; Laws 2018, LB1034, § 31.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

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.

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.

Cross References

Interstate Medical Licensure Compact, see section 38-3601.

38-2046 Physician assistants; legislative findings.

The Legislature finds that:

(1) In its concern with the geographic maldistribution of health care services in Nebraska it is essential to develop additional health personnel; and

(2) It is essential to encourage the more effective utilization of the skills of physicians and podiatrists by enabling them to delegate health care tasks to qualified physician assistants when such delegation is consistent with the patient's health and welfare.

It is the intent of the Legislature to encourage the utilization of physician assistants.

Source: Laws 1973, LB 101, § 1; R.S.Supp.,1973, § 85-179.04; Laws 1985, LB 132, § 1; R.S.1943, (2003), § 71-1,107.15; Laws 2007, LB463, § 704; Laws 2020, LB755, § 11.
Effective date November 14, 2020.

Cross References

Student loan program, Rural Health Systems and Professional Incentive Act, see section 71-5650.

38-2047 Physician assistants; services performed; supervision requirements.

(1) A physician assistant may perform medical services that (a) are delegated by and provided under the supervision of a licensed physician who meets the requirements of section 38-2050, (b) are appropriate to the level of education, experience, and training of the physician assistant, (c)(i) form a component of the supervising physician's scope of practice or (ii) form a component of the scope of practice of a physician who meets the requirements of section 38-2050 working in the same physician group as the physician assistant if delegated by and provided under the supervision of and collaboration with such physician, (d) are medical services for which the physician assistant has been prepared by education, experience, and training and that the physician assistant is competent to perform, and (e) are not otherwise prohibited by law.

(2) A physician assistant shall have at least one supervising physician for each employer. If the employer is a multispecialty practice, the physician assistant shall have a supervising physician for each specialty practice area in which the physician assistant performs medical services.

(3) Each physician assistant and his or her supervising physician shall be responsible to ensure that (a) the scope of practice of the physician assistant is identified, (b) the delegation of medical tasks is appropriate to the level of education, experience, and training of the physician assistant, (c) the relationship of and access to the supervising physician is defined, and (d) a process for evaluation of the performance of the physician assistant is established.

(4) A physician assistant may pronounce death and may complete and sign death certificates and any other forms if such acts are within the scope of practice of the physician assistant.

(5) A physician assistant may practice under the supervision of a podiatrist as provided in section 38-3013.

Source: Laws 1973, LB 101, § 3; R.S.Supp.,1973, § 85-179.06; Laws 1985, LB 132, § 3; Laws 1993, LB 316, § 2; Laws 1996, LB 1108, § 9; R.S.1943, (2003), § 71-1,107.17; Laws 2007, LB463, § 705; Laws 2009, LB195, § 43; Laws 2020, LB755, § 12.
Effective date November 14, 2020.

Cross References

Liability limitations:

Malpractice, Nebraska Hospital-Medical Liability Act, see section 44-2801 et seq.
 Rendering emergency aid, see section 25-21,186.

38-2049 Physician assistants; licenses; temporary licenses; issuance; 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.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-2050 Physician assistants; supervision; supervising physician; requirements; collaborative agreement.

(1) To be a supervising physician, a person shall:

(a) Be licensed to practice medicine and surgery under the Uniform Credentialing Act;

(b) Have no restriction imposed by the board on his or her ability to supervise or collaborate with a physician assistant; and

(c) Be a party to a collaborative agreement with the physician assistant.

(2) The supervising physician shall keep the collaborative agreement on file at his or her primary practice site, shall keep a copy of the collaborative agreement on file at each practice site where the physician assistant provides medical services, and shall make the collaborative agreement available to the board and the department upon request.

(3) Supervision of a physician assistant by a supervising physician shall be continuous but shall not require the physical presence of the supervising physician at the time and place that the services are rendered. A physician assistant may render services in a setting that is geographically remote from the supervising physician.

(4) A supervising physician may supervise no more than four physician assistants at any one time. The board may consider an application for waiver of this limit and may waive the limit upon a showing that the supervising physician meets the minimum requirements for the waiver. The department may adopt and promulgate rules and regulations establishing minimum requirements for such waivers.

Source: Laws 1973, LB 101, § 6; R.S.Supp.,1973, § 85-179.09; Laws 1985, LB 132, § 6; Laws 1993, LB 316, § 3; R.S.1943, (2003), § 71-1,107.20; Laws 2007, LB463, § 708; Laws 2009, LB195, § 45; Laws 2020, LB755, § 13.
Effective date November 14, 2020.

38-2053 Physician assistants; negligent acts; liability.

Any physician or physician groups utilizing physician assistants shall be liable for any negligent acts or omissions of physician assistants while acting under their supervision.

Source: Laws 1973, LB 101, § 14; R.S.Supp.,1973, § 85-179.17; Laws 1985, LB 132, § 13; R.S.1943, (2003), § 71-1,107.28; Laws 2007, LB463, § 711; Laws 2020, LB755, § 14.
Effective date November 14, 2020.

38-2054 Physician assistants; licensed; not engaged in unauthorized practice of medicine.

Any physician assistant who is licensed and who renders services under the supervision of a licensed physician as provided by the Medicine and Surgery Practice Act shall not be construed to be engaged in the unauthorized practice of medicine.

Source: Laws 1973, LB 101, § 15; R.S.Supp.,1973, § 85-179.18; Laws 1985, LB 132, § 14; Laws 1996, LB 1108, § 13; R.S.1943, (2003), § 71-1,107.29; Laws 2007, LB463, § 712; Laws 2020, LB755, § 15.
Effective date November 14, 2020.

38-2055 Physician assistants; prescribe drugs and devices; restrictions; therapeutic regimen; powers.

(1) A physician assistant, under a collaborative agreement with a supervising physician, may prescribe drugs and devices.

(2) All such prescriptions and prescription container labels shall bear the name of the physician assistant. A physician assistant who prescribes controlled substances listed in Schedule II, III, IV, or V of section 28-405 shall obtain a federal Drug Enforcement Administration registration number. A physician assistant may dispense drug samples to patients and may request, receive, or sign for drug samples.

(3) A physician assistant, under a collaborative agreement with a supervising physician, may plan and initiate a therapeutic regimen, which includes ordering and prescribing nonpharmacological interventions, including, but not limited to, durable medical equipment, nutrition, blood and blood products, and

diagnostic support services, such as home health care, hospice, physical therapy, and occupational therapy.

Source: Laws 1985, LB 132, § 15; Laws 1992, LB 1019, § 41; Laws 1999, LB 379, § 4; Laws 1999, LB 828, § 94; Laws 2005, LB 175, § 1; R.S.Supp.,2006, § 71-1,107.30; Laws 2007, LB463, § 713; Laws 2009, LB195, § 46; Laws 2020, LB755, § 16.
Effective date November 14, 2020.

Cross References

Schedules of controlled substances, see section 28-405.

38-2056 Physician Assistant Committee; created; membership; powers and duties; per diem; expenses.

(1) There is hereby created the Physician Assistant Committee which shall review and make recommendations to the board regarding all matters relating to physician assistants that come before the board. Such matters shall include, but not be limited to, (a) applications for licensure, (b) physician assistant education, (c) scope of practice, (d) proceedings arising pursuant to sections 38-178 and 38-179, (e) physician assistant licensure requirements, and (f) continuing competency. The committee shall be directly responsible to the board.

(2) The committee shall be appointed by the State Board of Health. The committee shall be composed of two physician assistants, one supervising physician, one member of the Board of Medicine and Surgery who shall be a nonvoting member of the committee, and one public member. The chairperson of the committee shall be elected by a majority vote of the committee members.

(3) At the expiration of the four-year terms of the members serving on December 1, 2008, appointments shall be for five-year terms. Members shall serve no more than two consecutive full five-year terms. Reappointments shall be made by the State Board of Health.

(4) The committee shall meet on a regular basis and committee members shall, in addition to necessary traveling and lodging expenses, receive a per diem for each day actually engaged in the discharge of his or her duties, including compensation for the time spent in traveling to and from the place of conducting business. Traveling and lodging expenses shall be reimbursed on the same basis as provided in sections 81-1174 to 81-1177. The compensation shall not exceed fifty dollars per day and shall be determined by the committee with the approval of the department.

Source: Laws 1973, LB 101, § 11; R.S.Supp.,1973, § 85-179.14; Laws 1985, LB 132, § 10; Laws 1996, LB 1108, § 11; Laws 1999, LB 828, § 93; Laws 2002, LB 1021, § 18; R.S.1943, (2003), § 71-1,107.25; Laws 2007, LB463, § 714; Laws 2020, LB755, § 17.
Effective date November 14, 2020.

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.

38-2063 Repealed. Laws 2019, LB29, § 5.

ARTICLE 21

MENTAL HEALTH PRACTICE ACT

Section

- 38-2104. Approved educational program, defined.
- 38-2112. Consultation, defined.
- 38-2115. Mental health practice, defined; limitation on practice.
- 38-2117. Mental health program, defined.
- 38-2122. Mental health practitioner; qualifications.
- 38-2123. Provisional mental health practitioner license; qualifications; application; expiration; disclosure required.
- 38-2124. Independent mental health practitioner; qualifications.
- 38-2125. Reciprocity; military spouse; temporary license.
- 38-2130. Certified marriage and family therapist, certified professional counselor, social worker; reciprocity; military spouse; temporary certificate.

38-2104 Approved educational program, defined.

(1) Approved educational program means a program of education and training accredited by an agency listed in subsection (2) of this section or approved by the board. Such approval may be based on the program's accreditation by an accrediting agency with requirements similar to an agency listed in subsection (2) of this section or on standards established by the board in the manner and form provided in section 38-133.

(2) Approved educational program includes a program of education and training accredited by:

- (a) The Commission on Accreditation for Marriage and Family Therapy Education;
- (b) The Council for Accreditation of Counseling and Related Educational Programs;
- (c) The Council on Rehabilitation Education;
- (d) The Council on Social Work Education; or
- (e) The American Psychological Association for a doctoral degree program enrolled in by a person who has a master's degree or its equivalent in psychology.

Source: Laws 1986, LB 286, § 12; R.S.1943, (1990), § 71-1,255; Laws 1993, LB 669, § 16; R.S.1943, (2003), § 71-1,297; Laws 2007, LB463, § 723; Laws 2018, LB1034, § 32.

38-2112 Consultation, defined.

Consultation means a professional collaborative relationship between a licensed mental health practitioner and a consultant who is a psychologist

licensed to engage in the practice of psychology in this state as provided in section 38-3111 or as provided in similar provisions of the Psychology Interjurisdictional Compact, a qualified physician, or a licensed independent mental health practitioner in which (1) the consultant makes a diagnosis based on information supplied by the licensed mental health practitioner and any additional assessment deemed necessary by the consultant and (2) the consultant and the licensed mental health practitioner jointly develop a treatment plan which indicates the responsibility of each professional for implementing elements of the plan, updating the plan, and assessing the client's progress.

Source: Laws 1993, LB 669, § 24; Laws 1994, LB 1210, § 95; R.S.1943, (2003), § 71-1,305; Laws 2007, LB463, § 731; Laws 2008, LB1108, § 1; Laws 2018, LB1034, § 33.

Cross References

Psychology Interjurisdictional Compact, see section 38-3901.

38-2115 Mental health practice, defined; limitation on practice.

(1) Mental health practice means the provision of treatment, assessment, psychotherapy, counseling, or equivalent activities to individuals, couples, families, or groups for behavioral, cognitive, social, mental, or emotional disorders, including interpersonal or personal situations.

(2) Mental health practice does not include:

(a) The practice of psychology or medicine;

(b) Prescribing drugs or electroconvulsive therapy;

(c) Treating physical disease, injury, or deformity;

(d) Diagnosing major mental illness or disorder except in consultation with a qualified physician, a psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111 or as provided in similar provisions of the Psychology Interjurisdictional Compact, or a licensed independent mental health practitioner;

(e) Measuring personality or intelligence for the purpose of diagnosis or treatment planning;

(f) Using psychotherapy with individuals suspected of having major mental or emotional disorders except in consultation with a qualified physician, a licensed psychologist, or a licensed independent mental health practitioner; or

(g) Using psychotherapy to treat the concomitants of organic illness except in consultation with a qualified physician or licensed psychologist.

(3) Mental health practice includes the initial assessment of organic mental or emotional disorders for the purpose of referral or consultation.

(4) Nothing in sections 38-2114, 38-2118, and 38-2119 shall be deemed to constitute authorization to engage in activities beyond those described in this section. Persons certified under the Mental Health Practice Act but not licensed under section 38-2122 shall not engage in mental health practice.

Source: Laws 1993, LB 669, § 26; Laws 1994, LB 1210, § 96; R.S.1943, (2003), § 71-1,307; Laws 2007, LB247, § 40; Laws 2007, LB463, § 733; Laws 2008, LB1108, § 2; Laws 2018, LB1034, § 34.

Cross References

Psychology Interjurisdictional Compact, see section 38-3901.

38-2117 Mental health program, defined.

Mental health program means an approved educational program in a field such as, but not limited to, social work, professional counseling, marriage and family therapy, human development, psychology, or family relations, the content of which contains an emphasis on therapeutic mental health and course work in psychotherapy and the assessment of mental disorders.

Source: Laws 1993, LB 669, § 28; R.S.1943, (2003), § 71-1,309; Laws 2007, LB463, § 735; Laws 2018, LB1034, § 35.

38-2122 Mental health practitioner; qualifications.

A person shall be qualified to be a licensed mental health practitioner if he or she:

(1) Has received a master's degree, a doctoral degree, or the equivalent of a master's degree, as determined by the board, that consists of course work and training which was primarily therapeutic mental health in content and included a practicum or internship and was from an approved educational program. Practicums or internships completed after September 1, 1995, must include a minimum of three hundred clock hours of direct client contact under the supervision of a qualified physician, a licensed psychologist, or a licensed mental health practitioner;

(2) Has successfully completed three thousand hours of supervised experience in mental health practice of which fifteen hundred hours were in direct client contact in a setting where mental health services were being offered and the remaining fifteen hundred hours included, but were not limited to, review of client records, case conferences, direct observation, and video observation. For purposes of this subdivision, supervised means monitored by a qualified physician, a licensed clinical psychologist, or a certified master social worker, certified professional counselor, or marriage and family therapist qualified for certification on September 1, 1994, for any hours completed before such date or by a qualified physician, a psychologist licensed to engage in the practice of psychology, or a licensed mental health practitioner for any hours completed after such date, including evaluative face-to-face contact for a minimum of one hour per week. Such three thousand hours shall be accumulated after completion of the master's degree, doctoral degree, or equivalent of the master's degree; and

(3) Has satisfactorily passed an examination approved by the board. An individual who by reason of educational background is eligible for certification as a certified master social worker, a certified professional counselor, or a certified marriage and family therapist shall take and pass a certification examination approved by the board before becoming licensed as a mental health practitioner.

Source: Laws 1993, LB 669, § 33; Laws 1994, LB 1210, § 100; Laws 1995, LB 406, § 31; Laws 1997, LB 622, § 84; Laws 1997, LB 752, § 160; R.S.1943, (2003), § 71-1,314; Laws 2007, LB463, § 740; Laws 2018, LB1034, § 36.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-2123 Provisional mental health practitioner license; qualifications; application; expiration; disclosure required.

(1) A person who needs to obtain the required three thousand hours of supervised experience in mental health practice as specified in section 38-2122 to qualify for a mental health practitioner license shall obtain a provisional mental health practitioner license. To qualify for a provisional mental health practitioner license, such person shall:

(a) Have a master's degree, a doctoral degree, or the equivalent of a master's degree, as determined by the board, that consists of course work and training which was primarily therapeutic mental health in content and included a practicum or internship and was from a mental health program as specified in section 38-2122;

(b) Apply prior to earning the three thousand hours of supervised experience; and

(c) Pay the provisional mental health practitioner license fee.

(2) The rules and regulations approved by the board and adopted and promulgated by the department shall not require that the applicant have a supervisor in place at the time of application for a provisional mental health practitioner license.

(3) A provisional mental health practitioner license shall expire upon receipt of licensure as a mental health practitioner or five years after the date of issuance, whichever comes first.

(4) A person who holds a provisional mental health practitioner license shall inform all clients that he or she holds a provisional license and is practicing mental health under supervision and shall identify the supervisor. Failure to make such disclosure is a ground for discipline as set forth in section 38-2139.

Source: Laws 1997, LB 622, § 81; Laws 2003, LB 242, § 73; R.S.1943, (2003), § 71-1,314.01; Laws 2007, LB463, § 741; Laws 2018, LB1034, § 37.

38-2124 Independent mental health practitioner; qualifications.

(1) No person shall hold himself or herself out as an independent mental health practitioner unless he or she is licensed as such by the department. A person shall be qualified to be a licensed independent mental health practitioner if he or she:

(a)(i)(A) Graduated with a master's or doctoral degree from an educational program which is accredited, at the time of graduation or within four years after graduation, by the Council for Accreditation of Counseling and Related Educational Programs, the Commission on Accreditation for Marriage and Family Therapy Education, or the Council on Social Work Education or (B) graduated with a master's or doctoral degree from an educational program deemed by the board to be equivalent in didactic content and supervised clinical experience to an accredited program;

(ii)(A) Is licensed as a licensed mental health practitioner or (B) is licensed as a provisional mental health practitioner and has satisfactorily passed an examination approved by the board pursuant to subdivision (3) of section 38-2122; and

(iii) Has three thousand hours of experience supervised by a licensed physician, a licensed psychologist, or a licensed independent mental health practitioner, one-half of which is comprised of experience with clients diagnosed under the major mental illness or disorder category; or

(b)(i) Graduated from an educational program which does not meet the requirements of subdivision (a)(i) of this subsection;

(ii)(A) Is licensed as a licensed mental health practitioner or (B) is licensed as a provisional mental health practitioner and has satisfactorily passed an examination approved by the board pursuant to subdivision (3) of section 38-2122; and

(iii) Has seven thousand hours of experience obtained in a period of not less than ten years and supervised by a licensed physician, a licensed psychologist, or a licensed independent mental health practitioner, one-half of which is comprised of experience with clients diagnosed under the major mental illness or disorder category.

(2) The experience required under this section shall be documented in a reasonable form and manner as prescribed by the board, which may consist of sworn statements from the applicant and his or her employers and supervisors. The board shall not in any case require the applicant to produce individual case records.

(3) The application for an independent mental health practitioner license shall include the applicant's social security number.

Source: Laws 2007, LB247, § 42; R.S.Supp.,2007, § 71-1,314.02; Laws 2008, LB1108, § 4; Laws 2018, LB1034, § 38.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

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 (1) 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, or (2) has been in active practice in the appropriate discipline for at least five years following initial licensure or certification in another jurisdiction and has passed the Nebraska jurisprudence examination. 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; Laws 2018, LB1034, § 39.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

ARTICLE 25

OCCUPATIONAL THERAPY PRACTICE ACT

Section

- 38-2517. Occupational therapist; therapy assistant; temporary license; applicability of section.
- 38-2518. Occupational therapist; license; application; requirements.
- 38-2519. Occupational therapy assistant; license; application; requirements; term.
- 38-2521. Continuing competency requirements; waiver.
- 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.

38-2518 Occupational therapist; license; application; requirements.

(1) An applicant applying for a license as an occupational therapist shall show to the satisfaction of the department that he or she:

(a) Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the department and accredited by a nationally recognized medical association or nationally recognized occupational therapy association;

(b) Has successfully completed a period of supervised fieldwork experience at an educational institution approved by the department and where the applicant's academic work was completed or which is part of a training program approved by such educational institution. A minimum of six months of supervised fieldwork experience shall be required for an occupational therapist; and

(c) Has passed an examination as provided in section 38-2520.

(2) In the case of an applicant who has been trained as an occupational therapist in a foreign country, the applicant shall:

(a) Present documentation of completion of an educational program in occupational therapy that is substantially equivalent to an approved program accredited by the Accreditation Council for Occupational Therapy Education or by an equivalent accrediting agency as determined by the board;

- (b) Present proof of proficiency in the English language; and
- (c) Have passed an examination as provided in section 38-2520.

(3) Residency in this state shall not be a requirement of licensure. A corporation, partnership, limited liability company, or association shall not be licensed as an occupational therapist pursuant to the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, § 34; Laws 1989, LB 344, § 33; Laws 1993, LB 121, § 452; Laws 1997, LB 752, § 194; Laws 2003, LB 242, § 139; R.S.1943, (2003), § 71-6106; Laws 2007, LB463, § 858; Laws 2018, LB1034, § 40.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-2519 Occupational therapy assistant; license; application; requirements; term.

(1) An applicant applying for a license as an occupational therapy assistant shall show to the satisfaction of the department that he or she:

(a) Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the department and accredited by a nationally recognized medical association or nationally recognized occupational therapy association;

(b) Has successfully completed a period of supervised fieldwork experience at an educational institution approved by the department and where the applicant's academic work was completed or which is part of a training program approved by such educational institution. A minimum of two months of supervised fieldwork experience shall be required for an occupational therapy assistant; and

(c) Has passed an examination as provided in section 38-2520.

(2) In the case of an applicant who has been trained as an occupational therapy assistant in a foreign country, the applicant shall:

(a) Present documentation of completion of an educational program for occupational therapy assistants that is substantially equivalent to an approved program accredited by the Accreditation Council for Occupational Therapy Education or by an equivalent accrediting agency as determined by the board;

(b) Present proof of proficiency in the English language; and

(c) Have passed an examination as provided in section 38-2520.

(3) Residency in this state shall not be a requirement of licensure as an occupational therapy assistant. A corporation, partnership, limited liability company, or association shall not be licensed as an occupational therapy assistant pursuant to the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, § 35; Laws 1989, LB 344, § 34; Laws 1993, LB 121, § 453; Laws 2003, LB 242, § 140; R.S.1943, (2003), § 71-6107; Laws 2007, LB463, § 859; Laws 2018, LB1034, § 41.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-2521 Continuing competency requirements; waiver.

The department, with the recommendation of the board, may waive continuing competency requirements, in part or in total, for any two-year licensing period when a licensee submits documentation that circumstances beyond his or her control prevented completion of such requirements as provided in section 38-146. In addition to circumstances determined by the department to be beyond the licensee's control pursuant to such section, such circumstances shall include situations in which:

(1) The licensee holds a Nebraska license but does not reside or practice in Nebraska;

(2) The licensee has submitted proof that he or she was suffering from a serious or disabling illness or physical disability which prevented completion of the required continuing competency activities during the twenty-four months preceding the license renewal date; and

(3) The licensee has successfully completed two or more semester hours of formal credit instruction biennially offered by a school or college approved by the board which contributes to meeting the requirements of an advanced degree in a postgraduate program relating to occupational therapy.

Source: Laws 1984, LB 761, § 41; Laws 1994, LB 1223, § 77; Laws 2001, LB 346, § 2; Laws 2002, LB 1021, § 96; Laws 2003, LB 242, § 142; Laws 2004, LB 1005, § 129; R.S.Supp.,2006, § 71-6113; Laws 2007, LB463, § 861; Laws 2018, LB1034, § 42.

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.

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.

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.

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.

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.

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.
- 38-2818.02. Drug product, defined.
- 38-2818.03. Drug product select, defined.

Section

- 38-2821.01. Equivalent, defined.
- 38-2823.01. Generic name, defined.
- 38-2825.02. Interchangeable biological product, defined.
- 38-2826. Labeling, defined.
- 38-2826.01. Long-term care facility, defined.
- 38-2833. Pharmacist in charge, defined.
- 38-2836.01. Practice agreement, defined.
- 38-2843.01. Repackage, defined.
- 38-2843.02. Remote dispensing, defined.
- 38-2843.03. Remote dispensing pharmacy, defined.
- 38-2843.04. Supervising pharmacy, defined.
- 38-2845. Supervision, defined.
- 38-2846.01. Validation, defined.
- 38-2847. Verification, 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.
- 38-2891. Pharmacy technicians; authorized tasks.
- 38-2891.01. Pharmacy technician; validate acts, tasks, and functions of pharmacy technician; policies and procedures.
- 38-2892. Pharmacy technicians; responsibility for supervision and performance.
- 38-2894. Pharmacy technician; registration; disciplinary measures; procedure; Licensee Assistance Program; participation.
- 38-2897. Duty to report impaired practitioner; immunity.
- 38-28,106. Communication of prescription, chart order, or refill authorization; limitation.
- 38-28,107. Collection or return of dispensed drugs and devices; conditions; fee; liability; professional disciplinary action.
- 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; Laws 2018, LB731, § 67; Laws 2019, LB74, § 1.

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; Laws 2018, LB731, § 68; Laws 2019, LB74, § 2.

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.

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.

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.

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.

38-2818.02 Drug product, defined.

Drug product means any drug or device as defined in section 38-2841.

Source: Laws 2017, LB481, § 7.

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.

38-2821.01 Equivalent, defined.

Equivalent means drug products that are both chemically equivalent and bioequivalent.

Source: Laws 2017, LB481, § 9.

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.

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.

38-2826 Labeling, defined.

Labeling means the process of preparing and affixing a label to any drug container or device container, exclusive of the labeling by a manufacturer, packager, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law or regulation. Compliance with labeling requirements under federal law for devices described in subsection (2) of section 38-2841, medical gases, and medical gas devices constitutes compliance with state law and regulations for purposes of this section. Labeling does not include affixing an auxiliary sticker or other such notation to a container after a drug has been dispensed when the sticker or notation is affixed by a person credentialed under the Uniform Credentialing Act in a facility licensed under the Health Care Facility Licensure Act.

Source: Laws 2007, LB463, § 922; Laws 2009, LB604, § 6; Laws 2010, LB849, § 8; Laws 2020, LB1052, § 2.
Effective date November 14, 2020.

Cross References

Health Care Facility Licensure Act, see section 71-401.

38-2826.01 Long-term care facility, defined.

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 substance use treatment center, a nursing facility, or a

skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act.

Source: Laws 2009, LB195, § 49; Laws 2013, LB23, § 8; Laws 2018, LB1034, § 43.

Cross References

Health Care Facility Licensure Act, see section 71-401.

38-2833 Pharmacist in charge, defined.

Pharmacist in charge means a pharmacist who is designated on a pharmacy license or a remote dispensing pharmacy license or designated by a hospital as being responsible for the practice of pharmacy in the pharmacy for which a pharmacy license or a remote dispensing pharmacy license is issued or in a hospital pharmacy and who works within the physical confines of such pharmacy or hospital pharmacy, except that the pharmacist in charge is not required to work within the physical confines of a remote dispensing pharmacy unless otherwise required by law.

Source: Laws 2007, LB463, § 929; Laws 2015, LB37, § 37; Laws 2018, LB731, § 69.

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.

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.

38-2843.02 Remote dispensing, defined.

Remote dispensing has the same meaning as in section 71-427.02.

Source: Laws 2018, LB731, § 70.

38-2843.03 Remote dispensing pharmacy, defined.

Remote dispensing pharmacy has the same meaning as in section 71-427.03.

Source: Laws 2018, LB731, § 71.

38-2843.04 Supervising pharmacy, defined.

Supervising pharmacy has the same meaning as in section 71-427.04.

Source: Laws 2018, LB731, § 72.

38-2845 Supervision, defined.

Supervision means the personal guidance and direction by a pharmacist of the performance by a pharmacy technician of authorized activities or functions subject to (1) verification by such pharmacist or (2) validation by a certified pharmacy technician subject to section 38-2891.01. Supervision of a pharmacy technician may occur by means of a real-time audiovisual communication system.

Source: Laws 2007, LB463, § 941; Laws 2013, LB326, § 1; Laws 2019, LB74, § 3.

38-2846.01 Validation, defined.

Validation means the action of a certified pharmacy technician checking the accuracy and completeness of the acts, tasks, or functions undertaken by another certified pharmacy technician as provided in section 38-2891.01.

Source: Laws 2019, LB74, § 4.

38-2847 Verification, defined.

(1) Verification means the confirmation by a supervising pharmacist of the accuracy and completeness of the acts, tasks, or functions undertaken by a pharmacy technician to assist the pharmacist in the practice of pharmacy.

(2) Verification shall occur by a pharmacist on duty in the facility, except that verification may occur by means of a real-time audiovisual communication system if (a) a pharmacy technician performs authorized activities or functions to assist a pharmacist and the prescribed drugs or devices will be administered to persons who are patients or residents of a facility by a credentialed individual authorized to administer medications or (b) a pharmacy technician is engaged in remote dispensing in compliance with section 71-436.02.

Source: Laws 2007, LB463, § 943; Laws 2013, LB326, § 2; Laws 2018, LB731, § 73.

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.

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.

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.

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 and an authorized refill to a pharmacist, pharmacist intern, or pharmacy technician 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; and any authorized refill transmitted by facsimile or electronic transmission shall be transmitted by the practitioner or the practitioner's agent directly to a pharmacist, pharmacist intern, or pharmacy technician. 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; Laws 2018, LB731, § 74.

38-2891 Pharmacy technicians; authorized tasks.

(1) A pharmacy technician shall only perform tasks which do not require the professional judgment of a pharmacist and which are subject to verification to assist a pharmacist in the practice of pharmacy.

(2) The functions and tasks which shall not be performed by pharmacy technicians include, but are not limited to:

(a) Receiving oral medical orders from a practitioner or his or her agent except as otherwise provided in subsection (3) of section 38-2870;

(b) Providing patient counseling;

(c) Performing any evaluation or necessary clarification of a medical order or performing any functions other than strictly clerical functions involving a medical order;

(d) Supervising or verifying the tasks and functions of pharmacy technicians;

(e) Interpreting or evaluating the data contained in a patient's record maintained pursuant to section 38-2869;

(f) Releasing any confidential information maintained by the pharmacy;

(g) Performing any professional consultations; and

(h) Drug product selection, with regard to an individual medical order, in accordance with the Nebraska Drug Product Selection Act.

(3) The director shall, with the recommendation of the board, waive any of the limitations in subsection (2) of this section for purposes of a scientific study of the role of pharmacy technicians approved by the board. Such study shall be based upon providing improved patient care or enhanced pharmaceutical care. Any such waiver shall state the length of the study and shall require that all study data and results be made available to the board upon the completion of the study. Nothing in this subsection requires the board to approve any study proposed under this subsection.

Source: Laws 2007, LB236, § 32; R.S.Supp.,2007, § 71-1,147.66; Laws 2007, LB247, § 82; Laws 2018, LB731, § 75.

Cross References

Nebraska Drug Product Selection Act, see section 38-28,108.

38-2891.01 Pharmacy technician; validate acts, tasks, and functions of pharmacy technician; policies and procedures.

(1) A pharmacy technician may validate the acts, tasks, and functions of another pharmacy technician only if:

(a) Both pharmacy technicians are certified by a state or national certifying body which is approved by the board;

(b) Both certified pharmacy technicians are working within the confines of a hospital preparing medications for administration in the hospital;

(c) Using bar code technology, radio frequency identification technology, or similar technology to validate the accuracy of medication;

(d) Validating medication that is prepackaged by the manufacturer or prepackaged and verified by a pharmacist; and

(e) Acting in accordance with policies and procedures applicable in the hospital established by the pharmacist in charge.

(2) The pharmacist in charge in a hospital shall establish policies and procedures for validation of medication by two or more certified pharmacy technicians before such validation process is implemented in the hospital.

Source: Laws 2019, LB74, § 5.

38-2892 Pharmacy technicians; responsibility for supervision and performance.

(1) The pharmacist in charge of a pharmacy, remote dispensing 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 remote dispensing pharmacy or 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; Laws 2018, LB731, § 76.

Cross References

Automated Medication Systems Act, see section 71-2444.

38-2894 Pharmacy technician; registration; disciplinary measures; procedure; Licensee Assistance Program; participation.

(1) A registration to practice as a pharmacy technician may be denied, refused renewal, removed, or suspended or have other disciplinary measures taken against it by the department, with the recommendation of the board, for failure to meet the requirements of or for violation of any of the provisions of subdivisions (1) through (18) and (20) through (25) of section 38-178 and sections 38-2890 to 38-2897 or the rules and regulations adopted under such sections.

(2) If the department proposes to deny, refuse renewal of, or remove or suspend a registration, it shall send the applicant or registrant a notice setting forth the action to be taken and the reasons for the determination. The denial, refusal to renew, removal, or suspension shall become final thirty days after mailing the notice unless the applicant or registrant gives written notice to the department of his or her desire for an informal conference or for a formal hearing.

(3) Notice may be served by any method specified in section 25-505.01, or the department may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01.

(4) Pharmacy technicians may participate in the Licensee Assistance Program described in section 38-175.

Source: Laws 2007, LB236, § 35; R.S.Supp.,2007, § 71-1,147.69; Laws 2007, LB247, § 83; Laws 2009, LB288, § 3; Laws 2019, LB449, § 5.

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.

Cross References

Health Care Quality Improvement Act, see section 71-7904.

Patient Safety Improvement Act, see section 71-8701.

38-28,106 Communication of prescription, chart order, or refill authorization; limitation.

An employee or agent of a prescribing practitioner may communicate a prescription, chart order, or refill authorization issued by the prescribing practitioner to a pharmacist or a pharmacist intern except for an emergency oral authorization for a controlled substance listed in Schedule II of section 28-405. An employee or agent of a prescribing practitioner may communicate a refill authorization issued by the prescribing practitioner to a pharmacy technician.

Source: Laws 2015, LB37, § 57; Laws 2018, LB731, § 77.

38-28,107 Collection or return of dispensed drugs and devices; conditions; fee; liability; professional disciplinary action.

(1) To protect the public safety, dispensed drugs or devices:

(a) May be collected in a pharmacy for disposal;

(b) May be returned to a pharmacy in response to a recall by the manufacturer, packager, or distributor or if a device is defective or malfunctioning;

(c) Shall not be returned to saleable inventory nor made available for subsequent relabeling and redispensing, except as provided in subdivision (1)(d) of this section; or

(d) May be accepted from a long-term care facility by the pharmacy from which they were dispensed for credit or for relabeling and redispensing, except that:

(i) No controlled substance may be returned;

(ii) No prescription drug or medical device that has restricted distribution by the federal Food and Drug Administration may be returned;

(iii) The decision to accept the return of the dispensed drug or device shall rest solely with the pharmacist;

(iv) The dispensed drug or device shall have been in the control of the long-term care facility at all times;

(v) The dispensed drug or device shall be in the original and unopened labeled container with a tamper-evident seal intact, as dispensed by the pharmacist. Such container shall bear the expiration date or calculated expiration date and lot number; and

(vi) Tablets or capsules shall have been dispensed in a unit dose container which is impermeable to moisture and approved by the board.

(2) Pharmacies may charge a fee for collecting dispensed drugs or devices for disposal or from a long-term care facility for credit or for relabeling and redispensing.

(3) Any person or entity which exercises reasonable care in collecting dispensed drugs or devices for disposal or from a long-term care facility for credit or for relabeling and redispensing pursuant to this section shall be immune from civil or criminal liability or professional disciplinary action of any kind for any injury, death, or loss to person or property relating to such activities.

(4) A drug manufacturer which exercises reasonable care shall be immune from civil or criminal liability for any injury, death, or loss to persons or property relating to the relabeling and redispensing of drugs returned from a long-term care facility.

(5) Notwithstanding subsection (4) of this section, the relabeling and redispensing of drugs returned from a long-term care facility does not absolve a drug manufacturer of any criminal or civil liability that would have existed but for the relabeling and redispensing and such relabeling and redispensing does not increase the liability of such drug manufacturer that would have existed but for the relabeling and redispensing.

(6) The pharmacist may package drugs and devices at the request of a patient or patient's caregiver if the drugs and devices were originally dispensed from a different pharmacy.

Source: Laws 1999, LB 333, § 1; Laws 2001, LB 398, § 74; Laws 2002, LB 1062, § 53; Laws 2007, LB247, § 51; Laws 2007, LB463, § 1199; Laws 2011, LB274, § 1; R.S.Supp.,2014, § 71-2421; Laws 2015, LB37, § 58; Laws 2020, LB1052, § 3.
Effective date November 14, 2020.

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.

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 the 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.

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.

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.

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.

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.

ARTICLE 30**PODIATRY PRACTICE ACT**

Section

38-3001. Act, how cited.

38-3002. Definitions, where found.

38-3005.01. Supervising podiatrist, defined.

38-3005.02. Supervision, defined.

38-3013. Physician assistants; services performed; collaborative agreement; supervision; requirements.

38-3014. Physician assistants; supervision; supervising podiatrist; requirements; collaborative agreement.

38-3001 Act, how cited.

Sections 38-3001 to 38-3014 shall be known and may be cited as the Podiatry Practice Act.

Source: Laws 2007, LB463, § 1023; Laws 2020, LB755, § 18.
Effective date November 14, 2020.

38-3002 Definitions, where found.

For purposes of the Podiatry Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-3003 to 38-3005.02 apply.

Source: Laws 2007, LB463, § 1024; Laws 2020, LB755, § 19.
Effective date November 14, 2020.

38-3005.01 Supervising podiatrist, defined.

Supervising podiatrist means a licensed podiatrist who supervises a physician assistant under a collaborative agreement.

Source: Laws 2020, LB755, § 20.
Effective date November 14, 2020.

38-3005.02 Supervision, defined.

Supervision means the ready availability of the supervising podiatrist for consultation and collaboration on the activities of the physician assistant.

Source: Laws 2020, LB755, § 21.
Effective date November 14, 2020.

38-3013 Physician assistants; services performed; collaborative agreement; supervision; requirements.

Under a collaborative agreement with a supervising podiatrist, a physician assistant may perform services that (1) are delegated by and provided under the supervision of a licensed podiatrist who meets the requirements of section 38-3014, (2) are appropriate to the level of education, experience, and training of the physician assistant, (3) form a component of the supervising podiatrist's scope of practice, (4) are medical services for which the physician assistant has been prepared by education, experience, and training and that the physician assistant is competent to perform within the scope of practice of the supervising podiatrist, and (5) are not otherwise prohibited by law. A physician assistant shall have at least one supervising podiatrist for each employer.

Source: Laws 2020, LB755, § 22.
Effective date November 14, 2020.

38-3014 Physician assistants; supervision; supervising podiatrist; requirements; collaborative agreement.

(1) To supervise a physician assistant, a podiatrist shall:

- (a) Be licensed to practice podiatry under the Podiatry Practice Act;
- (b) Have no restriction imposed by the board on such podiatrist's ability to supervise a physician assistant; and
- (c) Maintain a collaborative agreement with the physician assistant.

(2) The podiatrist shall keep the collaborative agreement on file at the podiatrist's primary practice site, shall keep a copy of the collaborative agreement on file at each practice site where the physician assistant provides podiatry services, and shall make the collaborative agreement available to the board and the department upon request.

(3) Supervision of a physician assistant by a supervising podiatrist shall be continuous but shall not require the physical presence of the supervising podiatrist at the time and place that the services are rendered. A physician

assistant may render services in a setting that is geographically remote from the supervising podiatrist.

(4) A supervising podiatrist may supervise no more than four physician assistants at any one time. The board may consider an application for waiver of this limit and may waive the limit upon a showing that the supervising podiatrist meets the minimum requirements for the waiver. The department may adopt and promulgate rules and regulations establishing minimum requirements for such waivers.

Source: Laws 2020, LB755, § 23.
Effective date November 14, 2020.

ARTICLE 31

PSYCHOLOGY PRACTICE ACT

Section

- 38-3101. Act, how cited.
38-3111. Psychology; references; how construed.
38-3120. Temporary practice pending licensure permitted; when; military spouse; temporary license.
38-3133. Administrator of Psychology Interjurisdictional Compact; duties.

38-3101 Act, how cited.

Sections 38-3101 to 38-3133 shall be known and may be cited as the Psychology Practice Act.

Source: Laws 2007, LB463, § 1035; Laws 2018, LB1034, § 44.

38-3111 Psychology; references; how construed.

(1) Unless otherwise expressly stated, references to licensed psychologists in the Nebraska Mental Health Commitment Act, in the Psychology Practice Act, in the Sex Offender Commitment Act, and in section 44-513 means only psychologists licensed to practice psychology in this state under section 38-3114 or under similar provisions of the Psychology Interjurisdictional Compact and does not mean persons holding a special license under section 38-3116 or holding a provisional license under the Psychology Practice Act.

(2) Any reference to a person certified to practice clinical psychology under the law in effect immediately prior to September 1, 1994, and any equivalent reference under the law of another jurisdiction, including, but not limited to, certified clinical psychologist, health care practitioner in psychology, or certified health care provider, shall be construed to refer to a psychologist licensed under the Uniform Credentialing Act except for persons licensed under section 38-3116 or holding a provisional license under the Psychology Practice Act.

Source: Laws 1994, LB 1210, § 76; Laws 1999, LB 366, § 12; Laws 2006, LB 1199, § 32; R.S.Supp.,2006, § 71-1,206.14; Laws 2007, LB463, § 1045; Laws 2018, LB1034, § 45.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.
Psychology Interjurisdictional Compact, see section 38-3901.
Sex Offender Commitment Act, see section 71-1201.

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.

38-3133 Administrator of Psychology Interjurisdictional Compact; duties.

The chairperson of the board or his or her designee shall serve as the administrator of the Psychology Interjurisdictional Compact for the State of Nebraska. The administrator shall give notice of withdrawal to the executive heads of all other party states within thirty days after the effective date of any statute repealing the compact enacted by the Legislature pursuant to Article XIII of the compact.

Source: Laws 2018, LB1034, § 46.

Cross References

Psychology Interjurisdictional Compact, see section 38-3901.

ARTICLE 32

RESPIRATORY CARE PRACTICE ACT

Section

38-3208. Practices not requiring licensure.

38-3212. Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.

38-3208 Practices not requiring licensure.

The Respiratory Care Practice Act shall not prohibit:

(1) The practice of respiratory care which is an integral part of the program of study by students enrolled in approved respiratory care education programs;

(2) The gratuitous care, including the practice of respiratory care, of the ill by a friend or member of the family or by a person who is not licensed to practice respiratory care if such person does not represent himself or herself as a respiratory care practitioner;

(3) The practice of respiratory care by nurses, physicians, physician assistants, physical therapists, or any other professional required to be licensed under the Uniform Credentialing Act when such practice is within the scope of practice for which that person is licensed to practice in this state;

(4) The practice of any respiratory care practitioner of this state or any other state or territory while employed by the federal government or any bureau or division thereof while in the discharge of his or her official duties;

(5) Techniques defined as pulmonary function testing and the administration of aerosol and inhalant medications to the cardiorespiratory system as it relates

to pulmonary function technology administered by a registered pulmonary function technologist credentialed by the National Board for Respiratory Care or a certified pulmonary function technologist credentialed by the National Board for Respiratory Care; or

(6) The performance of oxygen therapy or the initiation of noninvasive positive pressure ventilation by a registered polysomnographic technologist relating to the study of sleep disorders if such procedures are performed or initiated under the supervision of a licensed physician at a facility accredited by the American Academy of Sleep Medicine.

Source: Laws 1986, LB 277, § 17; Laws 1997, LB 622, § 83; Laws 2003, LB 242, § 64; Laws 2003, LB 667, § 5; R.S.1943, (2003), § 71-1,235; Laws 2007, LB463, § 1074; Laws 2018, LB731, § 78.

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.

ARTICLE 33

VETERINARY MEDICINE AND SURGERY PRACTICE ACT

Section

- | | |
|-------------|---|
| 38-3301. | Act, how cited. |
| 38-3302. | Definitions, where found. |
| 38-3307.02. | Equine, cat, and dog massage practice, defined. |
| 38-3314. | Unlicensed assistant, defined. |
| 38-3321. | Veterinarian; veterinary technician; animal therapist; license; required; exceptions. |
| 38-3327. | Applicant; reciprocity; requirements; military spouse; temporary license. |

38-3301 Act, how cited.

Sections 38-3301 to 38-3335 shall be known and may be cited as the Veterinary Medicine and Surgery Practice Act.

Source: Laws 1967, c. 439, § 1, p. 1353; Laws 1988, LB 1100, § 54; Laws 2000, LB 833, § 3; R.S.1943, (2003), § 71-1,153; Laws 2007, LB463, § 1083; Laws 2009, LB463, § 2; Laws 2011, LB687, § 2; Laws 2018, LB596, § 1.

38-3302 Definitions, where found.

For purposes of the Veterinary Medicine and Surgery Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-3303 to 38-3318 apply.

Source: Laws 2007, LB463, § 1084; Laws 2009, LB463, § 3; Laws 2018, LB596, § 2.

38-3307.02 Equine, cat, and dog massage practice, defined.

Equine, cat, and dog massage practice means the application of hands-on massage techniques for the purpose of increasing circulation, relaxing muscle spasms, relieving tension, enhancing muscle tone, and increasing range of motion in equines, cats, and dogs.

Source: Laws 2018, LB596, § 3.

38-3314 Unlicensed assistant, defined.

Unlicensed assistant means an individual who is not a licensed veterinarian, a licensed veterinary technician, or a licensed animal therapist and who is working in veterinary medicine. Unlicensed assistant does not include a person engaged in equine, cat, and dog massage practice.

Source: Laws 2007, LB463, § 1096; Laws 2009, LB463, § 6; Laws 2018, LB596, § 4.

38-3321 Veterinarian; veterinary technician; animal therapist; license; required; exceptions.

No person may practice veterinary medicine and surgery in the state who is not a licensed veterinarian, no person may perform delegated animal health care tasks in the state who is not a licensed veterinary technician or an unlicensed assistant performing such tasks within the limits established under subdivision (2) of section 38-3326, and no person may perform health care therapy on animals in the state who is not a licensed animal therapist. The Veterinary Medicine and Surgery Practice Act shall not be construed to prohibit:

- (1) An employee of the federal, state, or local government from performing his or her official duties;
- (2) A person who is a student in a veterinary school from performing duties or actions assigned by his or her instructors or from working under the direct supervision of a licensed veterinarian;
- (3) A person who is a student in an approved veterinary technician program from performing duties or actions assigned by his or her instructors or from working under the direct supervision of a licensed veterinarian or a licensed veterinary technician;
- (4) Any merchant or manufacturer from selling feed or feeds whether medicated or nonmedicated;
- (5) A veterinarian regularly licensed in another state from consulting with a licensed veterinarian in this state;
- (6) Any merchant or manufacturer from selling from his or her established place of business medicines, appliances, or other products used in the prevention or treatment of animal diseases or any merchant or manufacturer's representative from conducting educational meetings to explain the use of his or her products or from investigating and advising on problems developing from the use of his or her products;
- (7) An owner of livestock or a bona fide farm or ranch employee from performing any act of vaccination, surgery, pregnancy testing, retrievable transplantation of embryos on bovine, including recovering, freezing, and transferring embryos on bovine, or the administration of drugs in the treatment

of domestic animals under his or her custody or ownership nor the exchange of services between persons or bona fide employees who are principally farm or ranch operators or employees in the performance of these acts;

(8) A member of the faculty of a veterinary school or veterinary science department from performing his or her regular functions, or a person lecturing or giving instructions or demonstrations at a veterinary school or veterinary science department or in connection with a continuing competency activity;

(9) Any person from selling or applying any pesticide, insecticide, or herbicide;

(10) Any person from engaging in bona fide scientific research which reasonably requires experimentation involving animals;

(11) Any person from treating or in any manner caring for domestic chickens, turkeys, or waterfowl, which are specifically exempted from the Veterinary Medicine and Surgery Practice Act;

(12) Any person from performing dehorning or castrating livestock, not to include equidae.

For purposes of the Veterinary Medicine and Surgery Practice Act, castration shall be limited to the removal or destruction of male testes;

(13) Any person who holds a valid credential in the State of Nebraska in a health care profession or occupation regulated under the Uniform Credentialing Act from consulting with a licensed veterinarian or performing collaborative animal health care tasks on an animal under the care of such veterinarian if all such tasks are performed under the immediate supervision of such veterinarian;

(14) A person from performing a retrievable transplantation of embryos on bovine, including recovering, freezing, and transferring embryos on bovine, if the procedure is being performed by a person who (a) holds a doctorate degree in animal science with an emphasis in reproductive physiology from an accredited college or university and (b) has and can show proof of valid professional liability insurance; or

(15) Any person engaging solely in equine, cat, and dog massage practice.

Source: Laws 1967, c. 439, § 3, p. 1354; Laws 1986, LB 926, § 47; Laws 1988, LB 1100, § 56; Laws 2002, LB 1021, § 23; Laws 2004, LB 1005, § 18; Laws 2005, LB 301, § 11; R.S.Supp., 2006, § 71-1,155; Laws 2007, LB463, § 1103; Laws 2008, LB928, § 13; Laws 2009, LB463, § 7; Laws 2012, LB686, § 1; Laws 2018, LB596, § 5.

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.

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.

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.
 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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 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.

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.

Cross References

Medication Aide Registry, see section 71-6727.

ARTICLE 38

EMS PERSONNEL LICENSURE INTERSTATE COMPACT

Section

38-3801. EMS Personnel Licensure Interstate Compact.

38-3801 EMS Personnel Licensure Interstate Compact.

The State of Nebraska adopts the EMS Personnel Licensure Interstate Compact in the form substantially as follows:

ARTICLE 1. PURPOSE

In order to protect the public through verification of competency and ensure accountability for patient-care-related activities, all states license emergency medical services personnel, such as emergency medical technicians, advanced emergency medical technicians, and paramedics. The EMS Personnel Licensure Interstate Compact is intended to facilitate the day-to-day movement of emergency medical services personnel across state boundaries in the performance of their emergency medical services duties as assigned by an appropriate authority and authorize state emergency medical services offices to afford immediate legal recognition to emergency medical services personnel licensed in a member state. This compact recognizes that states have a vested interest in protecting the public's health and safety through their licensing and regulation of emergency medical services personnel and that such state regulation shared among the member states will best protect public health and safety. This compact is designed to achieve the following purposes and objectives:

1. Increase public access to emergency medical services personnel;

2. Enhance the states' ability to protect the public's health and safety, especially patient safety;
3. Encourage the cooperation of member states in the areas of emergency medical services personnel licensure and regulation;
4. Support licensing of military members who are separating from an active duty tour and their spouses;
5. Facilitate the exchange of information between member states regarding emergency medical services personnel licensure, adverse action, and significant investigatory information;
6. Promote compliance with the laws governing emergency medical services personnel practice in each member state; and
7. Invest all member states with the authority to hold emergency medical services personnel accountable through the mutual recognition of member state licenses.

ARTICLE 2. DEFINITIONS

In the EMS Personnel Licensure Interstate Compact:

A. Advanced emergency medical technician (AEMT) means an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.

B. Adverse action means any administrative, civil, equitable, or criminal action permitted by a state's laws which may be imposed against licensed EMS personnel by a state EMS authority or state court, including, but not limited to, actions against an individual's license such as revocation, suspension, probation, consent agreement, monitoring, or other limitation or encumbrance on the individual's practice, letters of reprimand or admonition, fines, criminal convictions, and state court judgments enforcing adverse actions by the state EMS authority.

C. Alternative program means a voluntary, nondisciplinary substance abuse recovery program approved by a state EMS authority.

D. Certification means the successful verification of entry-level cognitive and psychomotor competency using a reliable, validated, and legally defensible examination.

E. Commission means the national administrative body of which all states that have enacted the compact are members.

F. Emergency medical services (EMS) means services provided by emergency medical services personnel.

G. Emergency medical services (EMS) personnel includes emergency medical technicians, advanced emergency medical technicians, and paramedics.

H. Emergency medical technician (EMT) means an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.

I. Home state means a member state where an individual is licensed to practice emergency medical services.

J. License means the authorization by a state for an individual to practice as an EMT, an AEMT, or a paramedic.

K. Medical director means a physician licensed in a member state who is accountable for the care delivered by EMS personnel.

L. Member state means a state that has enacted the EMS Personnel Licensure Interstate Compact.

M. Privilege to practice means an individual's authority to deliver emergency medical services in remote states as authorized under this compact.

N. Paramedic means an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.

O. Remote state means a member state in which an individual is not licensed.

P. Restricted means the outcome of an adverse action that limits a license or the privilege to practice.

Q. Rule means a written statement by the commission promulgated pursuant to Article 12 of this compact that is of general applicability; implements, interprets, or prescribes a policy or provision of this compact; or is an organizational, procedural, or practice requirement of the 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.

R. Scope of practice means defined parameters of various duties or services that may be provided by an individual with specific credentials. Whether regulated by rule, statute, or court decision, it tends to represent the limits of services an individual may perform.

S. Significant investigatory information means:

1. Investigative information that a state EMS authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proved true, would result in the imposition of an adverse action on a license or privilege to practice; or

2. Investigative information that indicates that the individual represents an immediate threat to public health and safety regardless of whether the individual has been notified and had an opportunity to respond.

T. State means any state, commonwealth, district, or territory of the United States.

U. State EMS authority means the board, office, or other agency with the legislative mandate to license EMS personnel.

ARTICLE 3. HOME STATE LICENSURE

A. Any member state in which an individual holds a current license shall be deemed a home state for purposes of the EMS Personnel Licensure Interstate Compact.

B. Any member state may require an individual to obtain and retain a license to be authorized to practice in the member state under circumstances not authorized by the privilege to practice under the terms of this compact.

C. A home state's license authorizes an individual to practice in a remote state under the privilege to practice only if the home state:

1. Currently requires the use of the National Registry of Emergency Medical Technicians examination as a condition of issuing initial licenses at the EMT and paramedic levels;

2. Has a mechanism in place for receiving and investigating complaints about individuals;

3. Notifies the commission, in compliance with the terms of this compact, of any adverse action or significant investigatory information regarding an individual;

4. No later than five years after activation of this compact, requires a criminal background check of all applicants for initial licensure, 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 and submit documentation of such as promulgated in the rules of the commission; and

5. Complies with the rules of the commission.

ARTICLE 4. COMPACT PRIVILEGE TO PRACTICE

A. Member states shall recognize the privilege to practice of an individual license in another member state that is in conformance with Article 3 of the EMS Personnel Licensure Interstate Compact.

B. To exercise the privilege to practice under the terms and provisions of this compact, an individual must:

1. Be at least eighteen years of age;

2. Possess a current unrestricted license in a member state as an EMT, AEMT, paramedic, or state recognized and licensed level with a scope of practice and authority between EMT and paramedic; and

3. Practice under the supervision of a medical director.

C. An individual providing patient care in a remote state under the privilege to practice shall function within the scope of practice authorized by the home state unless and until modified by an appropriate authority in the remote state as may be defined in the rules of the commission.

D. Except as provided in section C of this Article, an individual practicing in a remote state will be subject to the remote state's authority and laws. A remote state may, in accordance with due process and that state's laws, restrict, suspend, or revoke an individual's privilege to practice in the remote state and may take any other necessary actions to protect the health and safety of its citizens. If a remote state takes action, it shall promptly notify the home state and the commission.

E. If an individual's license in any home state is restricted or suspended, the individual shall not be eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored.

F. If an individual's privilege to practice in any remote state is restricted, suspended, or revoked, the individual shall not be eligible to practice in any remote state until the individual's privilege to practice is restored.

ARTICLE 5. CONDITIONS OF PRACTICE IN A REMOTE STATE

An individual may practice in a remote state under a privilege to practice only in the performance of the individual's EMS duties as assigned by an appropriate authority, as defined in the rules of the commission, and under the following circumstances:

1. The individual originates a patient transport in a home state and transports the patient to a remote state;

2. The individual originates in the home state and enters a remote state to pick up a patient and provide care and transport of the patient to the home state;

3. The individual enters a remote state to provide patient care or transport within that remote state;

4. The individual enters a remote state to pick up a patient and provide care and transport to a third member state;

5. Other conditions as determined by rules promulgated by the commission.

ARTICLE 6. RELATIONSHIP TO EMERGENCY MANAGEMENT ASSISTANCE COMPACT

Upon a member state's governor's declaration of a state of emergency or disaster that activates the Emergency Management Assistance Compact, all relevant terms and provisions of the compact shall apply and to the extent any terms or provisions of the EMS Personnel Licensure Interstate Compact conflict with the Emergency Management Assistance Compact, the terms of the Emergency Management Assistance Compact shall prevail with respect to any individual practicing in the remote state in response to such declaration.

ARTICLE 7. VETERANS, SERVICE MEMBERS SEPARATING FROM ACTIVE DUTY MILITARY, AND THEIR SPOUSES

A. Member states shall consider a veteran, an active military service member, and a member of the National Guard and Reserves separating from an active duty tour, and a spouse thereof, who holds a current valid and unrestricted National Registry of Emergency Medical Technicians certification at or above the level of the state license being sought as satisfying the minimum training and examination requirements for such licensure.

B. Member states shall expedite the processing of licensure applications submitted by veterans, active military service members, and members of the National Guard and Reserves separating from an active duty tour and their spouses.

C. All individuals functioning with a privilege to practice under this Article remain subject to the adverse actions provisions of Article 8 of the EMS Personnel Licensure Interstate Compact.

ARTICLE 8. ADVERSE ACTIONS

A. A home state shall have exclusive power to impose adverse action against an individual's license issued by the home state.

B. If an individual's license in any home state is restricted or suspended, the individual shall not be eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored.

1. All home state adverse action orders shall include a statement that the individual's compact privileges are inactive. The order may allow the individual to practice in remote states with prior written authorization from the state EMS authority of both the home state and the remote state.

2. An individual currently subject to adverse action in the home state shall not practice in any remote state without prior written authorization from the state EMS authority of both the home state and the remote state.

C. A member state shall report adverse actions and any occurrences that the individual's compact privileges are restricted, suspended, or revoked to the commission in accordance with the rules of the commission.

D. A remote state may take adverse action on an individual's privilege to practice within that state.

E. Any member state may take adverse action against an individual's privilege to practice in that state based on the factual findings of another member state, so long as each state follows its own procedures for imposing such adverse action.

F. A home state's state EMS authority shall investigate and take appropriate action with respect to reported conduct in a remote state as it would if such conduct had occurred within the home state. In such cases, the home state's law shall control in determining the appropriate adverse action.

G. Nothing in the EMS Personnel Licensure Interstate Compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the member state's laws. Member states must require individuals who enter any alternative programs to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

ARTICLE 9. ADDITIONAL POWERS INVESTED IN A MEMBER STATE'S STATE EMS AUTHORITY

A member state's state EMS authority, in addition to any other powers granted under state law, is authorized under the EMS Personnel Licensure Interstate Compact to:

1. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a member state's state EMS authority for the attendance and testimony of witnesses, or the production of evidence from another member state, shall be enforced in the remote state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing state EMS authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence is located; and

2. Issue cease and desist orders to restrict, suspend, or revoke an individual's privilege to practice in the state.

ARTICLE 10. ESTABLISHMENT OF THE INTERSTATE COMMISSION FOR EMS PERSONNEL PRACTICE

A. The member states hereby create and establish a joint public agency known as the Interstate Commission for EMS Personnel Practice.

1. The commission is a body politic and an instrumentality of the member states.

2. Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in the EMS Personnel Licensure Interstate Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. Each member state shall have and be limited to one delegate. The responsible official of the state EMS authority or his or her designee shall be the delegate to this compact for each member state. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the member state in which the vacancy exists. In the event that more than one board, office, or other agency with the legislative mandate to license EMS personnel at and above the level of EMT exists, the Governor of the member state will determine which entity will be responsible for assigning the delegate.

2. Each delegate shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

3. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

4. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article 12 of this compact.

5. The commission may convene in a closed, nonpublic meeting if the commission must discuss:

- a. Noncompliance of a member state with its obligations under this compact;
- b. The employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;
- c. Current, threatened, or reasonably anticipated litigation;
- d. Negotiation of contracts for the purchase or sale of goods, services, or real estate;
- e. Accusing any person of a crime or formally censuring any person;
- f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
- g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- h. Disclosure of investigatory records compiled for law enforcement purposes;
- i. Disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or
- j. Matters specifically exempted from disclosure by federal or member state statute.

6. If a meeting, or portion of a meeting, is closed pursuant to this Article, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and

the reasons for the actions, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

C. The commission shall, by a majority vote of the delegates, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this compact, including, but not limited to:

1. Establishing the fiscal year of the commission;
2. Providing reasonable standards and procedures:
 - a. For the establishment and meetings of other committees; and
 - b. Governing any general or specific delegation of any authority or function of the commission;
3. Providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings, and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the membership votes to close a meeting in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed;
4. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the commission;
5. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any member state, the bylaws shall exclusively govern the personnel policies and programs of the commission;
6. Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees;
7. Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of this compact after the payment or reserving of all of its debts and obligations;
8. The commission shall publish its bylaws and file a copy thereof, and a copy of any amendment thereto, with the appropriate agency or officer in each of the member states, if any.
9. The commission shall maintain its financial records in accordance with the bylaws.
10. The commission shall meet and take such actions as are consistent with this compact and the bylaws.

D. The commission shall have the following powers:

1. The authority to promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all member states;
2. To bring and prosecute legal proceedings or actions in the name of the commission. The standing of any state EMS authority or other regulatory body

responsible for EMS personnel licensure to sue or be sued under applicable law shall not be affected;

3. To purchase and maintain insurance and bonds;
4. To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;
5. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this compact, and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
6. To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same. At all times the commission shall strive to avoid any appearance of impropriety or conflict of interest;
7. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed. At all times the commission shall strive to avoid any appearance of impropriety;
8. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;
9. To establish a budget and make expenditures;
10. To borrow money;
11. To appoint committees, including advisory committees comprised of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;
12. To provide and receive information from, and to cooperate with, law enforcement agencies;
13. To adopt and use an official seal; and
14. To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of EMS personnel licensure and practice.

E. Financing of the Commission

1. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.
2. The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.
3. The commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.
4. The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the member states, except by and with the authority of the member state.

5. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

F. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees, and representatives of the commission shall have no greater liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities, than a state employee would have under the same or similar circumstances. Nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. Nothing in this paragraph shall be construed to prohibit that person from retaining his or her own counsel. The commission shall provide such defense if the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

ARTICLE 11. COORDINATED DATA BASE

A. The commission shall provide for the development and maintenance of a coordinated data base and reporting system containing licensure, adverse action, and significant investigatory information on all licensed individuals in member states.

B. A member state shall submit a uniform data set to the coordinated data base on all individuals to whom the EMS Personnel Licensure Interstate Compact is applicable as required by the rules of the commission, including:

1. Identifying information;
2. Licensure data;
3. Significant investigatory information;

4. Adverse actions against an individual's license;
5. An indicator that an individual's privilege to practice is restricted, suspended, or revoked;
6. Nonconfidential information related to alternative program participation;
7. Any denial of application for licensure, and the reason for such denial; and
8. Other information that may facilitate the administration of this compact, as determined by the rules of the commission.

C. The coordinated data base administrator shall promptly notify all member states of any adverse action taken against, or significant investigative information on, any individual in a member state.

D. Member states contributing information to the coordinated data base may designate information that may not be shared with the public without the express permission of the contributing state.

E. Any information submitted to the coordinated data base that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the coordinated data base.

ARTICLE 12. RULEMAKING

A. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the EMS Personnel Licensure Interstate Compact, then such rule shall have no further force and effect in any member state.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

D. Prior to promulgation and adoption of a final rule or rules by the commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

1. On the web site of the commission; and
2. On the web site of each member state's state EMS authority or the publication in which each state would otherwise publish proposed rules.

E. The notice of proposed rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;
2. The text of the proposed rule or amendment and the reason for the proposed rule;
3. A request for comments on the proposed rule from any interested person; and
4. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

F. Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

G. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five persons;
2. A governmental subdivision or agency; or
3. An association having at least twenty-five members.

H. If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the commission from making a transcript or recording of the hearing if it so chooses.

4. Nothing in this Article shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this Article.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

J. The commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

K. If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public hearing.

L. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing. The usual rulemaking procedures provided in this compact and in this Article shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For purposes of this paragraph, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;
2. Prevent a loss of commission or member state funds;
3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
4. Protect public health and safety.

M. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or

grammatical errors. Public notice of any revisions shall be posted on the web site of the commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the chair of the commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

ARTICLE 13. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive, legislative, and judicial branches of state government in each member state shall enforce the EMS Personnel Licensure Interstate Compact and take all actions necessary and appropriate to effectuate this compact's purposes and intent. This compact and the rules promulgated under this compact shall have standing as statutory law.

2. All courts shall take judicial notice of this compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the commission.

3. The commission shall be entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission shall render a judgment or order void as to the commission, this compact, or promulgated rules.

B. Default, Technical Assistance, and Termination

1. If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:

a. Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the commission; and

b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from this compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by this compact may be terminated 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 default.

3. Termination of membership in this compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature or the speaker if no such leaders exist, and each of the member states.

4. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The commission shall not bear any costs related to a state that is found to be in default or that has been terminated from this compact, unless agreed upon in writing between the commission and the defaulting state.

6. The defaulting state may appeal the action of the commission by petitioning the United States District Court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution

1. Upon request by a member state, the commission shall attempt to resolve disputes related to this compact that arise among member states and between member and nonmember states.

2. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement

1. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. By majority vote, the commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with this compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies in this Article shall not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

ARTICLE 14. DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR EMS PERSONNEL PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

A. The EMS Personnel Licensure Interstate Compact shall come into effect on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of this compact.

B. Any state that joins the compact subsequent to the commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission shall have the full force and effect of law on the day the compact becomes law in that state.

C. Any member state may withdraw from this compact by enacting a statute repealing the same.

1. A member state's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's state EMS authority to comply with the investigative and adverse action

reporting requirements of this compact prior to the effective date of withdrawal.

D. Nothing contained in this compact shall be construed to invalidate or prevent any EMS personnel licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with this compact.

E. This compact may be amended by the member states. No amendment to this compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

ARTICLE 15. CONSTRUCTION AND SEVERABILITY

The EMS Personnel Licensure Interstate Compact shall be liberally construed so as to effectuate the purposes thereof. If this compact shall be held contrary to the constitution of any member state, the compact shall remain in full force and effect as to the remaining member states. Nothing in this compact supersedes state law or rules related to licensure of EMS agencies.

Source: Laws 2018, LB1034, § 69.

Cross References

Emergency Management Assistance Compact, see section 1-124, Appendix, Nebraska Revised Statutes, Volume 2A.

ARTICLE 39

PSYCHOLOGY INTERJURISDICTIONAL COMPACT

Section

38-3901. Psychology Interjurisdictional Compact.

38-3901 Psychology Interjurisdictional Compact.

The State of Nebraska adopts the Psychology Interjurisdictional Compact substantially as follows:

ARTICLE I

PURPOSE

States license psychologists in order to protect the public through verification of education, training, and experience and ensure accountability for professional practice.

The Psychology Interjurisdictional Compact is intended to regulate the day-to-day practice of telepsychology, the provision of psychological services using telecommunication technologies, by psychologists across state boundaries in the performance of their psychological practice as assigned by an appropriate authority.

The Compact is intended to regulate the temporary in-person, face-to-face practice of psychology by psychologists across state boundaries for thirty days within a calendar year in the performance of their psychological practice as assigned by an appropriate authority.

The Compact is intended to authorize state psychology regulatory authorities to afford legal recognition, in a manner consistent with the terms of the Compact, to psychologists licensed in another state.

The Compact recognizes that states have a vested interest in protecting the public's health and safety through licensing and regulation of psychologists and that such state regulation will best protect public health and safety.

The Compact does not apply when a psychologist is licensed in both the home and receiving states.

The Compact does not apply to permanent in-person, face-to-face practice; it does allow for authorization of temporary psychological practice.

Consistent with these principles, the Compact is designed to achieve the following purposes and objectives:

1. Increase public access to professional psychological services by allowing for telepsychological practice across state lines as well as temporary in-person, face-to-face services into a state which the psychologist is not licensed to practice psychology;
2. Enhance the states' ability to protect the public's health and safety, especially client or patient safety;
3. Encourage the cooperation of compact states in the areas of psychology licensure and regulation;
4. Facilitate the exchange of information between compact states regarding psychologist licensure, adverse actions, and disciplinary history;
5. Promote compliance with the laws governing psychological practice in each compact state; and
6. Invest all compact states with the authority to hold licensed psychologists accountable through the mutual recognition of compact state licenses.

ARTICLE II

DEFINITIONS

A. Adverse action means any action taken by a state psychology regulatory authority which finds a violation of a statute or regulation that is identified by the state psychology regulatory authority as discipline and is a matter of public record.

B. Association of State and Provincial Psychology Boards means the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities responsible for the licensure and registration of psychologists throughout the United States and Canada.

C. Authority to practice interjurisdictional telepsychology means a licensed psychologist's authority to practice telepsychology, within the limits authorized under the Psychology Interjurisdictional Compact, in another compact state.

D. Bylaws means those bylaws established by the Commission pursuant to Article X for its governance, or for directing and controlling its actions and conduct.

E. Client or patient means the recipient of psychological services, whether psychological services are delivered in the context of healthcare, corporate, supervision, and/or consulting services.

F. Commission means the Psychology Interjurisdictional Compact Commission which is the national administration of which all compact states are members.

G. Commissioner means the voting representative appointed by each state psychology regulatory authority pursuant to Article X.

H. Compact state means a state, the District of Columbia, or a United States territory that has enacted the Compact and which has not withdrawn pursuant

to Article XIII, subsection C or been terminated pursuant to Article XII, subsection B.

I. Coordinated Licensure Information System means an integrated process for collecting, storing, and sharing information on psychologists' licensure and enforcement activities related to psychology licensure laws, which is administered by the recognized membership organization composed of state and provincial psychology regulatory authorities.

J. Confidentiality means the principle that data or information is not made available or disclosed to unauthorized persons or processes.

K. Day means any part of a day in which psychological work is performed.

L. Distant state means the compact state where a psychologist is physically present, not through using telecommunications technologies, to provide temporary in-person, face-to-face psychological services.

M. E.Passport means a certificate issued by the Association of State and Provincial Psychology Boards that promotes the standardization in the criteria of interjurisdictional telepsychology practice and facilitates the process for licensed psychologists to provide telepsychological services across state lines.

N. Executive board means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.

O. Home state means a compact state where a psychologist is licensed to practice psychology. If the psychologist is licensed in more than one compact state and is practicing under the authorization to practice interjurisdictional telepsychology, the home state is the compact state where the psychologist is physically present when the telepsychology services are delivered. If the psychologist is licensed in more than one compact state and is practicing under the temporary authorization to practice, the home state is any compact state where the psychologist is licensed.

P. Identity history summary means a summary of information retained by the Federal Bureau of Investigation, or other designee with similar authority, in connection with arrests and, in some instances, federal employment, naturalization, or military service.

Q. In-person, face-to-face means interactions in which the psychologist and the client or patient are in the same physical space and which does not include interactions that may occur through the use of telecommunication technologies.

R. Interjurisdictional Practice Certificate means a certificate issued by the Association of State and Provincial Psychology Boards that grants temporary authority to practice based on notification to the state psychology regulatory authority of intention to practice temporarily and verification of one's qualifications for such practice.

S. License means authorization by a state psychology regulatory authority to engage in the independent practice of psychology, which would be unlawful without the authorization.

T. Noncompact state means any state which is not at the time a compact state.

U. Psychologist means an individual licensed for the independent practice of psychology.

V. Receiving state means a compact state where the client or patient is physically located when the telepsychology services are delivered.

W. Rule means a written statement by the Commission promulgated pursuant to Article XI that is of general applicability, implements, interprets, or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission and has the force and effect of statutory law in a compact state, and includes the amendment, repeal, or suspension of an existing rule.

X. Significant investigatory information means:

1. Investigative information that a state psychology regulatory authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proven true, would indicate more than a violation of state statute or ethics code that would be considered more substantial than minor infraction; or

2. Investigative information that indicates that the psychologist represents an immediate threat to public health and safety regardless of whether the psychologist has been notified or had an opportunity to respond.

Y. State means a state, commonwealth, territory, or possession of the United States or the District of Columbia.

Z. State psychology regulatory authority means the board, office, or other agency with the legislative mandate to license and regulate the practice of psychology.

AA. Telepsychology means the provision of psychological services using telecommunication technologies.

BB. Temporary authorization to practice means a licensed psychologist's authority to conduct temporary in-person, face-to-face practice, within the limits authorized under the Compact, in another compact state.

CC. Temporary in-person, face-to-face practice means the practice of psychology in which a psychologist is physically present, not through using telecommunications technologies, in the distant state to provide for the practice of psychology for thirty days within a calendar year and based on notification to the distant state.

ARTICLE III

HOME STATE LICENSURE

A. The home state shall be a compact state where a psychologist is licensed to practice psychology.

B. A psychologist may hold one or more compact state licenses at a time. If the psychologist is licensed in more than one compact state, the home state is the compact state where the psychologist is physically present when the services are delivered as authorized by the authority to practice interjurisdictional telepsychology under the terms of the Psychology Interjurisdictional Compact.

C. Any compact state may require a psychologist not previously licensed in a compact state to obtain and retain a license to be authorized to practice in the compact state under circumstances not authorized by the authority to practice interjurisdictional telepsychology under the terms of the Psychology Interjurisdictional Compact.

D. Any compact state may require a psychologist to obtain and retain a license to be authorized to practice in a compact state under circumstances not

authorized by temporary authorization to practice under the terms of the Compact.

E. A home state's license authorizes a psychologist to practice in a receiving state under the authority to practice interjurisdictional telepsychology only if the compact state:

1. Currently requires the psychologist to hold an active E.Passport;
2. Has a mechanism in place for receiving and investigating complaints about licensed individuals;
3. Notifies the Commission, in compliance with the terms of the Compact, of any adverse action or significant investigatory information regarding a licensed individual;
4. Requires an identity history summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, or other designee with similar authority, no later than ten years after activation of the Compact; and
5. Complies with the bylaws and rules of the Commission.

F. A home state's license grants temporary authorization to practice to a psychologist in a distant state only if the compact state:

1. Currently requires the psychologist to hold an active Interjurisdictional Practice Certificate;
2. Has a mechanism in place for receiving and investigating complaints about licensed individuals;
3. Notifies the Commission, in compliance with the terms of the Compact, of any adverse action or significant investigatory information regarding a licensed individual;
4. Requires an identity history summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, or other designee with similar authority, no later than ten years after activation of the Compact; and
5. Complies with the bylaws and rules of the Commission.

ARTICLE IV

COMPACT PRIVILEGE TO PRACTICE TELEPSYCHOLOGY

A. Compact states shall recognize the right of a psychologist, licensed in a compact state in conformance with Article III, to practice telepsychology in other compact states (receiving states) in which the psychologist is not licensed, under the authority to practice interjurisdictional telepsychology as provided in the Psychology Interjurisdictional Compact.

B. To exercise the authority to practice interjurisdictional telepsychology under the terms and provisions of the Compact, a psychologist licensed to practice in a compact state must:

1. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:
 - a. Regionally accredited by an accrediting body recognized by the United States Department of Education to grant graduate degrees, or authorized by provincial statute or Royal Charter to grant doctoral degrees; or

b. A foreign college or university deemed to be equivalent to subdivision 1a of this subsection by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services or by a recognized foreign credential evaluation service; and

2. Hold a graduate degree in psychology that meets the following criteria:

a. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;

b. The psychology program must stand as a recognizable, coherent, organizational entity within the institution;

c. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

d. The program must consist of an integrated, organized sequence of study;

e. There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

f. The designated director of the program must be a psychologist and a member of the core faculty;

g. The program must have an identifiable body of students who are matriculated in that program for a degree;

h. The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;

i. The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degrees and a minimum of one academic year of full-time graduate study for master's degrees;

j. The program includes an acceptable residency as defined by the rules of the Commission.

3. Possess a current, full, and unrestricted license to practice psychology in a home state which is a compact state;

4. Have no history of adverse action that violates the rules of the Commission;

5. Have no criminal record history reported on an identity history summary that violates the rules of the Commission;

6. Possess a current, active E.Passport;

7. Provide attestations in regard to areas of intended practice, conformity with standards of practice, competence in telepsychology technology; criminal background; and knowledge and adherence to legal requirements in the home and receiving states, and provide a release of information to allow for primary source verification in a manner specified by the Commission; and

8. Meet other criteria as defined by the rules of the Commission.

C. The home state maintains authority over the license of any psychologist practicing into a receiving state under the authority to practice interjurisdictional telepsychology.

D. A psychologist practicing into a receiving state under the authority to practice interjurisdictional telepsychology will be subject to the receiving state's authority and laws. A receiving state may, in accordance with that state's due process law, limit or revoke a psychologist's authority to practice interjurisdic-

tional telepsychology in the receiving state and may take any other necessary actions under the receiving state's applicable law to protect the health and safety of the receiving state's citizens. If a receiving state takes action, the state shall promptly notify the home state and the Commission.

E. If a psychologist's license in any home state, another compact state, or any authority to practice interjurisdictional telepsychology in any receiving state, is restricted, suspended, or otherwise limited, the E.Passport shall be revoked and therefor the psychologist shall not be eligible to practice telepsychology in a compact state under the authority to practice interjurisdictional telepsychology.

ARTICLE V

COMPACT TEMPORARY AUTHORIZATION TO PRACTICE

A. Compact states shall also recognize the right of a psychologist, licensed in a compact state in conformance with Article III, to practice temporarily in other compact states (distant states) in which the psychologist is not licensed, as provided in the Psychology Interjurisdictional Compact.

B. To exercise the temporary authorization to practice under the terms and provisions of the Compact, a psychologist licensed to practice in a compact state must:

1. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

a. Regionally accredited by an accrediting body recognized by the United States Department of Education to grant graduate degrees, or authorized by provincial statute or Royal Charter to grant doctoral degrees; or

b. A foreign college or university deemed to be equivalent to subdivision 1a of this subsection by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services or by a recognized foreign credential evaluation service; and

2. Hold a graduate degree in psychology that meets the following criteria:

a. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;

b. The psychology program must stand as a recognizable, coherent, organizational entity within the institution;

c. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

d. The program must consist of an integrated, organized sequence of study;

e. There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

f. The designated director of the program must be a psychologist and a member of the core faculty;

g. The program must have an identifiable body of students who are matriculated in that program for a degree;

h. The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;

i. The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degrees and a minimum of one academic year of full-time graduate study for master's degrees;

j. The program includes an acceptable residency as defined by the rules of the Commission.

3. Possess a current, full, and unrestricted license to practice psychology in a home state which is a compact state;

4. No history of adverse action that violates the rules of the Commission;

5. No criminal record history that violates the rules of the Commission;

6. Possess a current, active Interjurisdictional Practice Certificate;

7. Provide attestations in regard to areas of intended practice and work experience and provide a release of information to allow for primary source verification in a manner specified by the Commission; and

8. Meet other criteria as defined by the rules of the Commission.

C. A psychologist practicing into a distant state under the temporary authorization to practice shall practice within the scope of practice authorized by the distant state.

D. A psychologist practicing into a distant state under the temporary authorization to practice will be subject to the distant state's authority and law. A distant state may, in accordance with that state's due process law, limit or revoke a psychologist's temporary authorization to practice in the distant state and may take any other necessary actions under the distant state's applicable law to protect the health and safety of the distant state's citizens. If a distant state takes action, the state shall promptly notify the home state and the Commission.

E. If a psychologist's license in any home state, another compact state, or any temporary authorization to practice in any distant state, is restricted, suspended, or otherwise limited, the Interjurisdictional Practice Certificate shall be revoked and therefor the psychologist shall not be eligible to practice in a compact state under the temporary authorization to practice.

ARTICLE VI

**CONDITIONS OF TELEPSYCHOLOGY PRACTICE
IN A RECEIVING STATE**

A psychologist may practice in a receiving state under the authority to practice interjurisdictional telepsychology only in the performance of the scope of practice for psychology as assigned by an appropriate state psychology regulatory authority, as defined in the rules of the Commission, and under the following circumstances:

1. The psychologist initiates a client or patient contact in a home state via telecommunications technologies with a client or patient in a receiving state;

2. Other conditions regarding telepsychology as determined by rules promulgated by the Commission.

ARTICLE VII

ADVERSE ACTIONS

A. A home state shall have the power to impose adverse action against a psychologist's license issued by the home state. A distant state shall have the

power to take adverse action on a psychologist's temporary authorization to practice within that distant state.

B. A receiving state may take adverse action on a psychologist's authority to practice interjurisdictional telepsychology within that receiving state. A home state may take adverse action against a psychologist based on an adverse action taken by a distant state regarding temporary in-person, face-to-face practice.

C. If a home state takes adverse action against a psychologist's license, that psychologist's authority to practice interjurisdictional telepsychology is terminated and the E.Passport is revoked. Furthermore, that psychologist's temporary authorization to practice is terminated and the Interjurisdictional Practice Certificate is revoked.

1. All home state disciplinary orders which impose adverse action shall be reported to the Commission in accordance with the rules promulgated by the Commission. A compact state shall report adverse actions in accordance with the rules of the Commission.

2. In the event discipline is reported on a psychologist, the psychologist will not be eligible for telepsychology or temporary in-person, face-to-face practice in accordance with the rules of the Commission.

3. Other actions may be imposed as determined by the rules promulgated by the Commission.

D. A home state's state psychology regulatory authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a licensee which occurred in a receiving state as it would if such conduct had occurred by a licensee within the home state. In such cases, the home state's law shall control in determining any adverse action against a psychologist's license.

E. A distant state's state psychology regulatory authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a psychologist practicing under temporary authorization practice which occurred in that distant state as it would if such conduct had occurred by a licensee within the home state. In such cases, distant state's law shall control in determining any adverse action against a psychologist's temporary authorization to practice.

F. Nothing in the Psychology Interjurisdictional Compact shall override a compact state's decision that a psychologist's participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the compact state's law. Compact states must require psychologists who enter any alternative programs to not provide telepsychology services under the authority to practice interjurisdictional telepsychology or provide temporary psychological services under the temporary authorization to practice in any other compact state during the term of the alternative program.

G. No other judicial or administrative remedies shall be available to a psychologist in the event a compact state imposes an adverse action pursuant to subsection C of this Article.

ARTICLE VIII

ADDITIONAL AUTHORITIES INVESTED IN A COMPACT STATE'S STATE PSYCHOLOGY REGULATORY AUTHORITY

In addition to any other powers granted under state law, a compact state's state psychology regulatory authority shall have the authority under the Psychology Interjurisdictional Compact to:

1. Issue subpoenas, for both hearings and investigations, which require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a compact state's state psychology regulatory authority for the attendance and testimony of witnesses, or the production of evidence from another compact state shall be enforced in the latter state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing state psychology regulatory authority shall pay any witness fees, travel expenses, mileage fees, and other fees required by the service statutes of the state where the witnesses or evidence are located; and

2. Issue cease and desist orders, injunctive relief orders, or both to revoke a psychologist's authority to practice interjurisdictional telepsychology, temporary authorization to practice, or both.

3. During the course of any investigation, a psychologist may not change his or her home state licensure. A home state's state psychology regulatory authority is authorized to complete any pending investigations of a psychologist and to take any actions appropriate under its law. The home state's state psychology regulatory authority shall promptly report the conclusions of such investigations to the Commission. Once an investigation has been completed, and pending the outcome of the investigation, the psychologist may change his or her home state licensure. The Commission shall promptly notify the new home state of any such decisions as provided in the rules of the Commission. All information provided to the Commission or distributed by compact states pursuant to the psychologist shall be confidential, filed under seal, and used for investigatory or disciplinary matters. The Commission may create additional rules for mandated or discretionary sharing of information by compact states.

ARTICLE IX

COORDINATED LICENSURE INFORMATION SYSTEM

A. The Commission shall provide for the development and maintenance of a Coordinated Licensure Information System (Coordinated Database) and reporting system containing licensure and disciplinary action information on all psychologists or individuals to whom the Psychology Interjurisdictional Compact is applicable in all compact states as defined by the rules of the Commission.

B. Notwithstanding any other provision of state law to the contrary, a compact state shall submit a uniform data set to the Coordinated Database on all licensees as required by the rules of the Commission, including:

1. Identifying information;
2. Licensure data;
3. Significant investigatory information;
4. Adverse actions against a psychologist's license;
5. An indicator that a psychologist's authority to practice interjurisdictional telepsychology or temporary authorization to practice is revoked;
6. Nonconfidential information related to alternative program participation information;

7. Any denial of application for licensure, and the reasons for such denial; and

8. Other information which may facilitate the administration of the Compact, as determined by the rules of the Commission.

C. The Coordinated Database administrator shall promptly notify all compact states of any adverse action taken against, or significant investigative information on, any licensee in a compact state.

D. Compact states reporting information to the Coordinated Database may designate information that may not be shared with the public without the express permission of the compact state reporting the information.

E. Any information submitted to the Coordinated Database that is subsequently required to be expunged by the law of the compact state reporting the information shall be removed from the Coordinated Database.

ARTICLE X

ESTABLISHMENT OF THE PSYCHOLOGY INTERJURISDICTIONAL COMPACT COMMISSION

A. The compact states hereby create and establish a joint public agency known as the Psychology Interjurisdictional Compact Commission.

1. The Commission is a body politic and an instrumentality of the compact states.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in the Psychology Interjurisdictional Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. The Commission shall consist of one voting representative appointed by each compact state who shall serve as that state's Commissioner. The state psychology regulatory authority shall appoint the state's delegate. This delegate shall be empowered to act on behalf of the compact state. This delegate shall be limited to:

a. Executive director, executive secretary, or similar executive;

b. Current member of the state psychology regulatory authority of a compact state; or

c. Designee empowered with the appropriate delegate authority to act on behalf of the compact state.

2. Any Commissioner may be removed or suspended from office as provided by the law of the state from which the Commissioner is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the compact state in which the vacancy exists.

3. Each Commissioner shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. A Commissioner shall vote in person or by such other means as provided in the

bylaws. The bylaws may provide for Commissioners' participation in meetings by telephone or other means of communication.

4. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

5. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article XI.

6. The Commission may convene in a closed, nonpublic meeting if the Commission must discuss:

- a. Noncompliance of a compact state with its obligations under the Compact;
- b. The employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;
- c. Current, threatened, or reasonably anticipated litigation against the Commission;
- d. Negotiation of contracts for the purchase or sale of goods, services, or real estate;
- e. Accusation against any person of a crime or formally censuring any person;
- f. Disclosure of trade secrets or commercial or financial information which is privileged or confidential;
- g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- h. Disclosure of investigatory records compiled for law enforcement purposes;
- i. Disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility for investigation or determination of compliance issues pursuant to the Compact; or
- j. Matters specifically exempted from disclosure by federal and state statute.

7. If a meeting, or portion of a meeting, is closed pursuant to this Article, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The Commission shall keep minutes which fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, of any person participating in the meeting, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release only by a majority vote of the Commission or order of a court of competent jurisdiction.

C. The Commission shall, by a majority vote of the Commissioners, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the Compact, including, but not limited to:

1. Establishing the fiscal year of the Commission;
2. Providing reasonable standards and procedures:
 - a. For the establishment and meetings of other committees; and

b. Governing any general or specific delegation of any authority or function of the Commission;

3. Providing reasonable procedures for calling and conducting meetings of the Commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals of such proceedings, and proprietary information, including trade secrets. The Commission may meet in closed session only after a majority of the Commissioners vote to close a meeting to the public in whole or in part. As soon as practicable, the Commission must make public a copy of the vote to close the meeting revealing the vote of each Commissioner with no proxy votes allowed;

4. Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the Commission;

5. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar law of any compact state, the bylaws shall exclusively govern the personnel policies and programs of the Commission;

6. Promulgating a code of ethics to address permissible and prohibited activities of Commission members and employees;

7. Providing a mechanism for concluding the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment, reserving, or both of all of its debts and obligations;

8. The Commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compact states;

9. The Commission shall maintain its financial records in accordance with the bylaws; and

10. The Commission shall meet and take such actions as are consistent with the provisions of the Compact and the bylaws.

D. The Commission shall have the following powers:

1. The authority to promulgate uniform rules to facilitate and coordinate implementation and administration of the Compact. The rules shall have the force and effect of law and shall be binding in all compact states;

2. To bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state psychology regulatory authority or other regulatory body responsible for psychology licensure to sue or be sued under applicable law shall not be affected;

3. To purchase and maintain insurance and bonds;

4. To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a compact state;

5. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

6. To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the Commission shall strive to avoid any appearance of impropriety or conflict of interest;

7. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal, or mixed; provided that at all times the Commission shall strive to avoid any appearance of impropriety;

8. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

9. To establish a budget and make expenditures;

10. To borrow money;

11. To appoint committees, including advisory committees comprised of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in the Compact and the bylaws;

12. To provide and receive information from, and to cooperate with, law enforcement agencies;

13. To adopt and use an official seal; and

14. To perform such other functions as may be necessary or appropriate to achieve the purposes of the Compact consistent with the state regulation of psychology licensure, temporary in-person, face-to-face practice, and telepsychology practice.

E. The Executive Board

The elected officers shall serve as the Executive Board, which shall have the power to act on behalf of the Commission according to the terms of the Compact.

1. The Executive Board shall be comprised of six members:

a. Five voting members who are elected from the current membership of the Commission by the Commission; and

b. One ex-officio, nonvoting member from the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities.

2. The ex-officio member must have served as staff or member on a state psychology regulatory authority and will be selected by its respective organization.

3. The Commission may remove any member of the Executive Board as provided in bylaws.

4. The Executive Board shall meet at least annually.

5. The Executive Board shall have the following duties and responsibilities:

a. Recommend to the entire Commission changes to the rules or bylaws, changes to the Compact, fees paid by compact states such as annual dues, and any other applicable fees;

b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of member states and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in rules or bylaws.

F. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each compact state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission which shall promulgate a rule binding upon all compact states.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the compact states, except by and with the authority of the compact state.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees, and representatives of the Commission shall have no greater liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties, or responsibilities, than a state employee would have under the same or similar circumstances; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

ARTICLE XI RULEMAKING

A. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the compact states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Psychology Interjurisdictional Compact, then such rule shall have no further force and effect in any compact state.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

D. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a notice of proposed rulemaking:

1. On the web site of the Commission; and
2. On the web site of each compact state's state psychology regulatory authority or the publication in which each state would otherwise publish proposed rules.

E. The notice of proposed rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;
2. The text of the proposed rule or amendment and the reason for the proposed rule;
3. A request for comments on the proposed rule from any interested person; and
4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

F. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

G. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five persons who submit comments independently of each other;
2. A governmental subdivision or agency; or

3. A duly appointed person in an association that has at least twenty-five members.

H. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the Commission from making a transcript or recording of the hearing if it so chooses.

4. Nothing in this Article shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this Article.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

J. The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

K. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

L. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this paragraph, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;
2. Prevent a loss of Commission or compact state funds;
3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
4. Protect public health and safety.

M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the web site of the Commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge

shall be made in writing, and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

ARTICLE XII

OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive, legislative, and judicial branches of state government in each compact state shall enforce the Psychology Interjurisdictional Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The Compact and the rules promulgated under the Compact shall have standing as statutory law.

2. All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a compact state pertaining to the subject matter of the Compact which may affect the powers, responsibilities, or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, the Compact, or promulgated rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a compact state has defaulted in the performance of its obligations or responsibilities under the Compact or the promulgated rules, the Commission shall:

a. Provide written notice to the defaulting state and other compact states of the nature of the default, the proposed means of remedying the default, or any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to remedy the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the compact states, and all rights, privileges, and benefits conferred by the Compact shall be terminated on the effective date of termination. A remedy of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be submitted by the Commission to the Governor, the majority and minority leaders of the defaulting state's legislature or the Speaker if no such leaders exist, and each of the compact states.

4. A compact state which has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations which extend beyond the effective date of termination.

5. The Commission shall not bear any costs incurred by the state which is found to be in default or which has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the United States District Court for the State of Georgia or the federal district where the Compact has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution

1. Upon request by a compact state, the Commission shall attempt to resolve disputes related to the Compact which arise among compact states and between compact and noncompact states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes that arise before the Commission.

D. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the State of Georgia or the federal district where the Compact has its principal offices against a compact state in default to enforce compliance with the provisions of the Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies in this Article shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

ARTICLE XIII

DATE OF IMPLEMENTATION OF THE PSYCHOLOGY
INTERJURISDICTIONAL COMPACT COMMISSION AND
ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENTS

A. The Psychology Interjurisdictional Compact shall come into effect on the date on which the Compact is enacted into law in the seventh compact state. The provisions which become effective at that time shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

B. Any state which joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule which has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

C. Any compact state may withdraw from this Compact by enacting a statute repealing the same.

1. A compact state's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's state psychology regulatory authority to comply with the investigative and adverse action reporting requirements of the Compact prior to the effective date of withdrawal.

D. Nothing contained in the Compact shall be construed to invalidate or prevent any psychology licensure agreement or other cooperative arrangement between a compact state and a noncompact state which does not conflict with the Compact.

E. The Compact may be amended by the compact states. No amendment to the Compact shall become effective and binding upon any compact state until it is enacted into the law of all compact states.

ARTICLE XIV

CONSTRUCTION AND SEVERABILITY

The Psychology Interjurisdictional Compact shall be liberally construed so as to effectuate the purposes of the Compact. If the Compact shall be held contrary to the constitution of any state which is a member of the Compact, the Compact shall remain in full force and effect as to the remaining compact states.

Source: Laws 2018, LB1034, § 70.

ARTICLE 40

PHYSICAL THERAPY LICENSURE COMPACT

Section
38-4001. Physical Therapy Licensure Compact.

38-4001 Physical Therapy Licensure Compact.

The State of Nebraska adopts the Physical Therapy Licensure Compact in the form substantially as follows:

ARTICLE I

PURPOSE

a. The purpose of the Physical Therapy Licensure Compact is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services. The practice of physical therapy occurs in the state where the patient or client is located at the time of the patient or client encounter. The Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

b. This Compact is designed to achieve the following objectives:

1. Increase public access to physical therapy services by providing for the mutual recognition of other member state licenses;
2. Enhance the states' ability to protect the public's health and safety;
3. Encourage the cooperation of member states in regulating multistate physical therapy practice;
4. Support spouses of relocating military members;
5. Enhance the exchange of licensure, investigative, and disciplinary information between member states; and
6. Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards.

ARTICLE II

DEFINITIONS

As used in the Physical Therapy Licensure Compact, and except as otherwise provided, the following definitions shall apply:

1. Active duty military means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. 1209 and 1211.

2. Adverse action means disciplinary action taken by a physical therapy licensing board based upon misconduct, unacceptable performance, or a combination of both.

3. Alternative program means a nondisciplinary monitoring or practice remediation process approved by a physical therapy licensing board. This includes, but is not limited to, substance abuse issues.

4. Commission means the Physical Therapy Compact Commission which is the national administrative body whose membership consists of all states that have enacted the Compact.

5. Compact privilege means the authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state where the patient or client is located at the time of the patient or client encounter.

6. Continuing competence means a requirement, as a condition of license renewal, to provide evidence of participation in, or completion of, educational and professional activities relevant to practice or area of work.

7. Data system means a repository of information about licensees, including examination, licensure, investigative, compact privilege, and adverse action.

8. Encumbered license means a license that a physical therapy licensing board has limited in any way.

9. Executive board means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

10. Home state means the member state that is the licensee's primary state of residence.

11. Investigative information means information, records, and documents received or generated by a physical therapy licensing board pursuant to an investigation.

12. Jurisprudence requirement means the assessment of an individual's knowledge of the laws and rules governing the practice of physical therapy in a state.

13. Licensee means an individual who currently holds an authorization from the state to practice as a physical therapist or to work as a physical therapist assistant.

14. Member state means a state that has enacted the Compact.

15. Party state means any member state in which a licensee holds a current license or compact privilege or is applying for a license or compact privilege.

16. Physical therapist means an individual who is licensed by a state to practice physical therapy.

17. Physical therapist assistant means an individual who is licensed or certified by a state and who assists the physical therapist in selected components of physical therapy.

18. Physical therapy, physical therapy practice, and the practice of physical therapy mean the care and services provided by or under the direction and supervision of a licensed physical therapist.

19. Physical therapy licensing board means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.

20. Remote state means a member state, other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

21. Rule means a regulation, principle, or directive promulgated by the Commission that has the force of law.

22. State means any state, commonwealth, district, or territory of the United States that regulates the practice of physical therapy.

ARTICLE III

STATE PARTICIPATION IN THE COMPACT

a. To participate in the Physical Therapy Licensure Compact, a state must:

1. Participate fully in the Commission's data system, including using the Commission's unique identifier as defined in rules;

2. Have a mechanism in place for receiving and investigating complaints about licensees;

3. Notify the Commission, in compliance with the terms of the Compact and rules, of any adverse action or the availability of investigative information regarding a licensee;

4. Fully implement a criminal background check requirement, within a timeframe established by rule, by receiving the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions in accordance with this Article;

5. Comply with the rules of the Commission;

6. Utilize a recognized national examination as a requirement for licensure pursuant to the rules of the Commission; and

7. Have continuing competence requirements as a condition for license renewal.

b. Upon adoption of this statute, the member state shall have the authority to obtain biometric-based information from each physical therapy licensure applicant and submit this information to the Federal Bureau of Investigation for a criminal background check in accordance with 28 U.S.C. 534 and 34 U.S.C. 40316.

c. A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the Compact and rules.

d. Member states may charge a fee for granting a compact privilege.

ARTICLE IV

COMPACT PRIVILEGE

a. To exercise the compact privilege under the terms and provisions of the Physical Therapy Licensure Compact, the licensee shall:

1. Hold a license in the home state;

2. Have no encumbrance on any state license;

3. Be eligible for a compact privilege in any member state in accordance with paragraphs d, g, and h of this Article;

4. Have not had any adverse action against any license or compact privilege within the previous two years;

5. Notify the Commission that the licensee is seeking the compact privilege within a remote state;

6. Pay any applicable fees, including any state fee, for the compact privilege;

7. Meet any jurisprudence requirements established by the remote state in which the licensee is seeking a compact privilege; and

8. Report to the Commission adverse action taken by any nonmember state within thirty days from the date the adverse action is taken.

b. The compact privilege is valid until the expiration date of the home license. The licensee must comply with the requirements of paragraph a of this Article to maintain the compact privilege in the remote state.

c. A licensee providing physical therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

d. A licensee providing physical therapy in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, or take any other necessary actions to protect the health and safety of its citizens. The licensee is not eligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.

e. If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

1. The home state license is no longer encumbered; and

2. Two years have elapsed from the date of the adverse action.

f. Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of paragraph a of this Article to obtain a compact privilege in any remote state.

g. If a licensee's compact privilege in any remote state is removed, the individual shall lose the compact privilege in any remote state until the following occur:

1. The specific period of time for which the compact privilege was removed has ended;

2. All fines have been paid; and

3. Two years have elapsed from the date of the adverse action.

h. Once the requirements of paragraph g of this Article have been met, the licensee must meet the requirements in paragraph a of this Article to obtain a compact privilege in a remote state.

ARTICLE V

ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

A licensee who is active duty military or is the spouse of an individual who is active duty military may designate one of the following as the home state:

a. Home of record;

b. Permanent change of station (PCS); or

c. State of current residence if it is different than the PCS state or home of record.

ARTICLE VI ADVERSE ACTIONS

a. A home state shall have exclusive power to impose adverse action against a license issued by the home state.

b. A home state may take adverse action based on the investigative information of a remote state, so long as the home state follows its own procedures for imposing adverse action.

c. Nothing in the Physical Therapy Licensure Compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the member state's laws. Member states must require licensees who enter any alternative programs in lieu of discipline to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

d. Any member state may investigate actual or alleged violations of the statutes and rules authorizing the practice of physical therapy in any other member state in which a physical therapist or physical therapist assistant holds a license or compact privilege.

e. A remote state shall have the authority to:

1. Take adverse actions as set forth in paragraph d of Article IV against a licensee's compact privilege in the state;

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a physical therapy licensing board in a party state for the attendance and testimony of witnesses, or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence are located; and

3. If otherwise permitted by state law, recover from the licensee the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee.

f. Joint Investigations

1. In addition to the authority granted to a member state by its respective physical therapy practice act or other applicable state law, a member state may participate with other member states in joint investigations of licensees.

2. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

ARTICLE VII ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT COMMISSION

a. The member states hereby create and establish a joint public agency known as the Physical Therapy Compact Commission:

1. The Commission is an instrumentality of the Compact states.
 2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.
 3. Nothing in the Physical Therapy Licensure Compact shall be construed to be a waiver of sovereign immunity.
- b. Membership, Voting, and Meetings
1. Each member state shall have and be limited to one delegate selected by that member state's physical therapy licensing board.
 2. The delegate shall be a current member of the physical therapy licensing board, who is a physical therapist, a physical therapist assistant, a public member, or the administrator of the physical therapy licensing board.
 3. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.
 4. The member state physical therapy licensing board shall fill any vacancy occurring in the Commission.
 5. Each delegate shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission.
 6. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.
 7. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.
- c. The Commission shall have the following powers and duties:
1. Establish the fiscal year of the Commission;
 2. Establish bylaws;
 3. Maintain its financial records in accordance with the bylaws;
 4. Meet and take such actions as are consistent with the Compact and the bylaws;
 5. Promulgate uniform rules to facilitate and coordinate implementation and administration of the Compact. The rules shall have the force and effect of law and shall be binding in all member states;
 6. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state physical therapy licensing board to sue or be sued under applicable law shall not be affected;
 7. Purchase and maintain insurance and bonds;
 8. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;
 9. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

10. Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety or conflict of interest;

11. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

12. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

13. Establish a budget and make expenditures;

14. Borrow money;

15. Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in the Compact and the bylaws;

16. Provide and receive information from, and cooperate with, law enforcement agencies;

17. Establish and elect an executive board; and

18. Perform such other functions as may be necessary or appropriate to achieve the purposes of the Compact consistent with the state regulation of physical therapy licensure and practice.

d. The Executive Board

The executive board shall have the power to act on behalf of the Commission according to the terms of the Compact.

1. The executive board shall be composed of nine members:

A. Seven voting members who are elected by the Commission from the current membership of the Commission;

B. One ex officio, nonvoting member from the recognized national physical therapy professional association; and

C. One ex officio, nonvoting member from the recognized membership organization of the physical therapy licensing boards.

2. The ex officio members will be selected by their respective organizations.

3. The Commission may remove any member of the executive board as provided in bylaws.

4. The executive board shall meet at least annually.

5. The executive board shall have the following duties and responsibilities:

A. Recommend to the entire Commission changes to the rules or bylaws, changes to the Compact, fees paid by Compact member states such as annual dues, and any commission Compact fee charged to licensees for the compact privilege;

B. Ensure Compact administration services are appropriately provided, contractual or otherwise;

C. Prepare and recommend the budget;

D. Maintain financial records on behalf of the Commission;

E. Monitor Compact compliance of member states and provide compliance reports to the Commission;

F. Establish additional committees as necessary; and

G. Other duties as provided in rules or bylaws.

e. Meetings of the Commission

1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article IX.

2. The Commission or the executive board or other committees of the Commission may convene in a closed, nonpublic meeting if the Commission or executive board or other committees of the Commission must discuss:

A. Noncompliance of a member state with its obligations under the Compact;

B. The employment, compensation, discipline, or other matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

C. Current, threatened, or reasonably anticipated litigation;

D. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

E. Accusing any person of a crime or formally censuring any person;

F. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

G. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

H. Disclosure of investigative records compiled for law enforcement purposes;

I. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or

J. Matters specifically exempted from disclosure by federal or member state statute.

3. If a meeting, or portion of a meeting, is closed pursuant to this Article, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

4. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

f. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount

sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule binding upon all member states.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the member states, except by and with the authority of the member state.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

g. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees, and representatives of the Commission shall have no greater liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties, or responsibilities, than a state employee would have under the same or similar circumstances; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

ARTICLE VIII

DATA SYSTEM

a. The Commission shall provide for the development, maintenance, and utilization of a coordinated data base and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

b. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom the Physical Therapy Licensure Compact is applicable as required by the rules of the Commission, including:

1. Identifying information;
2. Licensure data;
3. Adverse actions against a license or compact privilege;
4. Nonconfidential information related to alternative program participation;
5. Any denial of application for licensure, and the reason for such denial; and
6. Other information that may facilitate the administration of the Compact, as determined by the rules of the Commission.

c. Investigative information pertaining to a licensee in any member state will only be available to other party states.

d. The Commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

e. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

f. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

ARTICLE IX RULEMAKING

a. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

b. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Physical Therapy Licensure Compact within four years of the date of adoption of the rule, then such rule shall have no further force and effect in any member state.

c. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

d. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least thirty days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a notice of proposed rulemaking:

1. On the web site of the Commission or other publicly accessible platform; and

2. On the web site of each member state physical therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

e. The notice of proposed rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

2. The text of the proposed rule or amendment and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

f. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

g. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five persons;

2. A state or federal governmental subdivision or agency; or

3. An association having at least twenty-five members.

h. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. All hearings will be recorded. A copy of the recording will be made available on request.

4. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this Article.

i. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

j. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

k. The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

l. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment,

or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this paragraph, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;
2. Prevent a loss of Commission or member state funds;
3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
4. Protect public health and safety.

m. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the web site of the Commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

ARTICLE X

OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

a. Oversight

1. The executive, legislative, and judicial branches of state government in each member state shall enforce the Physical Therapy Licensure Compact and 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.

2. 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 Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, the Compact, or promulgated rules.

b. Default, Technical Assistance, and Termination

1. If the Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the Compact or the promulgated rules, the Commission shall:

A. Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the Commission; and

B. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by the Compact may be terminated 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 default.

3. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting state's legislature or the Speaker if no such leaders exist, and each of the member states.

4. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The Commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

c. Dispute Resolution

1. Upon request by a member state, the Commission shall attempt to resolve disputes related to the Compact that arise among member states and between member and nonmember states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

d. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a member state in default to enforce compliance with the Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies in this Article shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

ARTICLE XI

DATE OF IMPLEMENTATION OF THE INTERSTATE
COMMISSION FOR PHYSICAL THERAPY PRACTICE
AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

a. The Physical Therapy Licensure Compact shall come into effect on the date on which the Compact is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers

granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

b. Any state that joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

c. Any member state may withdraw from the Compact by enacting a statute repealing the same.

1. A member state's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's physical therapy licensing board to comply with the investigative and adverse action reporting requirements of the Compact prior to the effective date of withdrawal.

d. Nothing contained in the Compact shall be construed to invalidate or prevent any physical therapy licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the Compact.

e. The Compact may be amended by the member states. No amendment to the Compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

ARTICLE XII

CONSTRUCTION AND SEVERABILITY

The Physical Therapy Licensure Compact shall be liberally construed so as to effectuate the purposes of the Compact. The provisions of the Compact shall be severable and if any phrase, clause, sentence, or provision of the Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of the Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If the Compact shall be held contrary to the constitution of any party state, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

Source: Laws 2018, LB731, § 101.